

SRNS-MS-2008-0009

Revision 8

August 1, 2012

**GENERAL PROVISIONS  
FOR FIXED-PRICE ORDERS**

**UNDER**

**U. S. DEPARTMENT OF ENERGY PRIME  
CONTRACT NO. DE-ACO9-08SR22470**

**SAVANNAH RIVER NUCLEAR SOLUTIONS,  
LLC  
SAVANNAH RIVER SITE  
AIKEN, SC 29808**

*\* Incorporated by reference to appropriate FAR  
clause (see <https://www.acquisition.gov/far/>) and DEAR  
(see [http://energy.gov/management/downloads/searchable-  
electronic-department-energy-acquisition-regulation](http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation))*

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## SECTION A

### **SECTION A ARTICLES APPLY REGARDLESS OF ORDER PRICE**

#### **A.1 DEFINITIONS**

Whenever used in this document with initial capitalization, the following definitions shall be applicable unless the context indicates otherwise:

A. "Contracting Officer" shall mean the Government official executing the Prime Contract No. DE-AC09-08SR22470 between SRNS and DOE. The Contracting Officer is the Government Official who is authorized to execute, administer, and terminate the contract, and includes the authorized representatives thereof, when such individuals are

acting within the limits of their authority as delegated by the Contracting Officer.

B. "DOE" shall mean the United States Department of Energy or any duly authorized representative thereof, including any successor or predecessor agency thereof, including the Contracting Officer.

C. "Government" shall mean the United States of America.

D. "Head of the agency" or "Secretary" shall mean the Secretary, the Under Secretary, and Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency.

E. "Services" shall mean labor, direction of labor, production of technical information, consulting services or any other services furnished by Subcontractor/Supplier and its Subcontractors/Suppliers under this Order.

F. "Subcontract" shall mean any Order entered into by the Subcontractors/Suppliers calling for supplies and/or services required for performance, Order modification, or Subcontract.

G. "Subcontractor/Supplier" shall mean any Subcontractor or Supplier of any tier who supplies goods and/or services in connection with the obligations under this Order.

H. "Subcontractor/Supplier" shall also mean the person or organization entering into this Order with SRNS.

I. "Supplies" shall mean equipment, components, parts and materials to be provided by Subcontractor/Supplier and its Subcontractors/Suppliers of any tier pursuant to this Order.

J. "Vendor Data" shall mean any and all information, data, and documentation to be provided by Subcontractor/Supplier and its Subcontractors/Suppliers of any tier under this Order.

K. "Work" shall mean Supplies, Services, and Vendor Data provided by Subcontractor/Supplier and its Subcontractors/Suppliers of any tier and all work performed with respect thereto, pursuant to this Order.

L. "SRNS" shall mean Savannah River Nuclear Solutions, LLC.

M. "SRNS Procurement Representative" shall mean a person with the authority to execute, administer, and terminate the Order and make related determinations and findings. The term includes certain authorized representatives of SRNS acting within the limits of their authority as delegated by the Procurement Representative.

N. "Covered Funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting

codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

- O. "Non-Federal Employer" means any employer with respect to Covered Funds – the contractor or Subcontractor/Supplier, as the case may be, if the contractor or Subcontractor/Supplier is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or Subcontractor/Supplier receiving the funds and any contractor or Subcontractor/Supplier of the State or local government; and does not mean any department, agency, or other entity of the federal government.

## **A.2 GENERAL**

The terms and conditions of these General Provisions and those set forth in the Savannah River Nuclear Solutions, LLC (SRNS) Order or Subcontract apply notwithstanding any different or additional terms and conditions which may be submitted or proposed by Subcontractor/Supplier, and SRNS objects to and shall not be bound by any such additional or different terms and conditions.

- A. This Order, which term shall be determined to include related plans, drawings, specifications, and other documents, contains the entire agreement and understanding between the parties as to the subject matter of this Order, and merges and supersedes all prior agreements, understandings, commitments, representations, writings, electronic or otherwise, and discussions between them. Neither of the parties will be bound by any prior obligations, conditions, warranties, or representations with respect to the subject matter of this Order. The parties agree that recourse may not be had to the alleged prior dealings, usage of trade, course of dealing, or course of performance to explain or supplement the express terms of this Order.
- B. The failure of either party to enforce at any time any of the provisions of this Order or to require at any time performance by the other party of any of such provisions shall in no way be construed to be a waiver of such provision, nor in any way to affect the validity of this Order or any parts thereof, or the right of either party thereafter to enforce each and every provision.

- C. The headings used in this Order are not to be construed as modifying, limiting or expanding in any way the scope or extent of the provisions in this Order.
- D. All references herein to the Department of Energy Acquisition Regulations (DEAR) or Federal Acquisition Regulations (FAR) are those in effect on the date of this Order.
- E. In the event of an inconsistency between provisions of this Order, the inconsistency shall be resolved by giving precedence as follows:
- (1) Order;
  - (2) These General Provisions;
  - (3) Statement of work; and
  - (4) Other provisions of this Order, whether incorporated by reference or otherwise.
- F. Wherever references are made in this Order to standards or codes in accordance with which the Work under this Order is to be performed, the edition or revision of the standards or codes current on the effective date of this Order shall apply unless otherwise expressly stated in the specifications and drawings. In case of conflict between any reference standards and codes and any Order Document, the latter shall govern.
- G. Subcontractor/Supplier shall perform all Work pursuant to this Order as an independent contractor. No act or Order of SRNS shall be determined to be an exercise of supervision or control of performance hereunder. No provision of this Order and no action taken by SRNS under this Order shall be construed to make or constitute SRNS the employer or joint employer of any of the employees of Subcontractor/Supplier or any Subcontractor/Supplier.
- H. Subcontractors/Suppliers must have a DUNS number and be registered in the Central Contractor Registration (CCR). The information required for CCR Registration is to be provided on the SIF (Subcontractor/Supplier Information Form).

## **A.3 SUBCONTRACTING**

- A. Subcontractor/Supplier shall not subcontract all or substantially all of the Work without the prior written electronic approval of SRNS. This provision shall not apply to purchases of standard commercial articles or raw materials on which Subcontractor/Supplier shall perform further work.
- B. Subcontractor/Supplier shall select Subcontractors/Suppliers on a competitive basis to the maximum practicable extent consistent with the objectives and requirements of this Order.
- C. When the use of Subtier Subcontractors/Suppliers is determined to be necessary, the Prime Subcontractor/Supplier is responsible to flow

down those Technical and Quality requirements determined to be applicable for the activities within its defined scope of work, in accordance with referenced Codes/Standards/Material Specifications, or other requirements identified within the Procurement documents included with this Order/Subcontract package. The Prime Subcontractor/Supplier is furthermore responsible to flow down all commercial Terms and Conditions, including articles incorporated by reference, to all Subtier Subcontractors/Suppliers, *which includes verification that* the Subtier Subcontractor/Supplier has been appropriately qualified to perform the activities required to satisfy this procurement. The Prime Subcontractor/Supplier must maintain objective evidence of the successful flow down of the referenced requirements and provide such evidence to SRNS upon request. This flow down is also required at all levels if the Subtier Subcontractor/Supplier to the Prime Subcontractor/Supplier deems it necessary to further subcontract its parts of this SRNS contract.

- D. When NQA-1 is invoked as the governing quality standard, the Prime Subcontractor/Supplier and applicable Subtier Subcontractors/Suppliers shall be required to meet the Part I Requirements (Sections 100 through 900, as determined to be applicable) in the Procurement document. NQA-1 Part II will be invoked at the discretion of SRNS and will be detailed via the Procurement documents, and if invoked, must be flowed down from the Prime Subcontractor/Supplier to its applicable Subtier Subcontractors/Suppliers at all levels. If the Prime Subcontractor/Supplier or its Subtier Subcontractors/Suppliers intends to upgrade materials by way of a Commercial Grade Dedication Process, SRNS must be notified of this intent and the Subcontractor's/Supplier's process verified and approved prior to dedicating any material associated with SRNS procurement.
- E. The SRNS Procurement Representative is to be notified in writing, electronically, within five working days of any changes within your company as identified below:
- (1) Key quality personnel to include as a minimum:
    - (i) Quality Assurance/Quality Control Manager
    - (ii) Assistant Quality Assurance/Quality Control Manager
    - (iii) Other critical Quality Assurance/ Quality Control personnel
  - (2) Quality Assurance Program Revisions
  - (3) Company ownership transfers/buy-outs, and

- (4) All identified Nonconformance or Corrective Action Reports associated with SRNS Subcontracts including those issued concerning Subtier Subcontractors/Suppliers.

#### **A.4 CHANGES, EXTRAS AND SUBSTITUTIONS**

- A. SRNS may at any time, by a written electronic Change Order from the SRNS Supply Chain Management Department (SCM), and without notice to the sureties, if any, make changes, within the general scope of this Order. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the Work under this Order, whether changed or not changed by the Order, SRNS shall make an equitable adjustment in (1) the contract price, (2) the time of performance or delivery schedule or both; and (3) other affected terms of this Order, and shall modify this Order accordingly. Any proposal by Subcontractor/Supplier for adjustment under this article, together with such supporting information as SRNS may require, must be submitted in writing, electronically within thirty days from the date of receipt by the Subcontractor/Supplier of the notification of change; provided however, that SRNS, if it decides that the facts justify such action, may receive and act upon any such proposal for adjustment at any time prior to final payment under this Order. Where the cost of property made obsolete or excess as a result of a change is included in Subcontractor's/Supplier's proposal for adjustment, SRNS shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute within the meaning of the article of this Order entitled "Disputes". However, nothing herein shall excuse Subcontractor/Supplier from proceeding with this Order as changed.
- B. Any changes, extras or additional work made or performed by Subcontractor/Supplier without the prior approval of the SRNS Supply Chain Management Department shall be at the sole risk and expense of Subcontractor/Supplier, there being no financial recourse against SRNS or the Government whatsoever.
- C. Subcontractor/Supplier shall not substitute other equipment or materials for those specified in this Order, or vary the quantity of the Work, or otherwise make any changes in the Work, without prior written electronic consent of SRNS.

#### **A.5 APPROVALS**

The approval by SRNS of designs, work drawings, specifications, reports, or any other data submitted by

Subcontractor/Supplier hereunder shall not affect or relieve Subcontractor/Supplier from any responsibility to furnish said items in full conformance with the requirements of this Order.

#### **A.6 DELIVERY AND PAYMENT**

- A. Subcontractor/Supplier shall work such hours, as may be necessary to meet the Order delivery date(s), or any duly authorized extensions thereof, at no increase in the price of this Order. Subcontractor/Supplier shall issue electronically all invoices directly to Accounts Payable via the **SRNS-ACCTSPAY@srs.gov** email account. Subcontractor/Supplier shall include banking information on each invoice submitted to facilitate proper EFT. Subcontractor/Supplier shall provide the correct subcontract or purchase order and line item with dollar value per specific line item referenced on all invoices.
- B. Unless otherwise provided in this Order, delivery shall not be made more than 15 days prior to the delivery dates specified herein and SRNS may return earlier deliveries at Subcontractor's/Supplier's risk and expense. Subcontractor/Supplier shall comply with the delivery schedule provided in this Order.
- C. Unless otherwise specified in this Order, a separate invoice shall be issued upon each delivery of Supplies or completion of Services, and shall be payable by SRNS upon receipt and acceptance of Supplies or completion of Services and receipt by SRNS of a correct invoice therefore. Credit and discount periods shall be computed from the date such invoice is so payable to the date SRNS's check is mailed or, for Electronic Funds Transfer (EFT), the specified payment date. Unless freight and other charges are itemized, the discount will be taken on the full amount of invoice.
- D. Payment Withheld - Vendor Data. If this Order requires the submittal of Vendor Data, and if such Vendor Data, or any part thereof, is not delivered within the time specified by this Order, or is deficient upon delivery, SRNS may, until such Vendor Data is delivered or deficiencies are corrected, without limiting any of its other rights or remedies, withhold payments not to exceed 20% of the Order price to the Subcontractor/Supplier.
- E. Notwithstanding anything herein, SRNS shall be entitled at any and all times to set off against any amounts payable at any time by SRNS hereunder any amount owing from Subcontractor/Supplier to SRNS under this Order or other Orders with Subcontractor/Supplier.
- F. Overpayments. If Subcontractor/Supplier becomes aware of a duplicate invoice payment or

that SRNS has otherwise overpaid on an invoice payment, the Subcontractor/Supplier shall immediately notify SRNS and request instructions for disposition of the overpayment.

#### **A.7 PAYMENT BY ELECTRONIC FUNDS TRANSFER**

- A. Methods of Payment.
  - (1) All payments by SRNS under this Order shall be made by Electronic Funds Transfer (EFT) except as provided in paragraph A.2 of this Article. As used in this Article, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
  - (2) In the event SRNS is unable to release one or more payments by EFT, Subcontractor/Supplier agrees to either:
    - (i) Accept payment by check or some other mutually agreeable method of payment; or
    - (ii) Request SRNS to extend payment due dates until such time as SRNS makes payment by EFT.
- B. Mandatory Submission of Subcontractor's/Supplier's EFT Information. Subcontractor/Supplier is required to provide SRNS with the information required to make payment by EFT. Subcontractor/Supplier shall provide this information directly to the office designated in this Order, on forms provided by SRNS, no later than 15 days after award. If not otherwise specified in this Order, the payment office is the designated office for receipt of Subcontractor's/Supplier's EFT information. In the event that the EFT information changes, the Subcontractor/Supplier shall be responsible for providing the updated information to the designated office.
- C. Mechanisms for EFT Payment. SRNS may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System.
- D. Suspension of Payment.
  - (1) SRNS is not required to make any payment under this Order until after receipt, by the designated office, of the correct EFT payment information from Subcontractor/Supplier. Until receipt of the correct EFT information, any invoice or Subcontract financing request shall be determined to be an incorrect invoice for the purpose of payment under this Order.
  - (2) If the EFT information changes after submission of correct EFT information, SRNS shall begin using the changed EFT

information no later than 30 days after its receipt by the designated office. However, Subcontractor/Supplier may request that no further payments be made until the updated EFT information is implemented by the payment office.

E. Payment Information.

On the day payment on Subcontractor's/Supplier's invoice is due, SRNS will issue instructions to its bank to transfer payment to Subcontractor/Supplier, and will also send a FAX to Subcontractor/Supplier explaining the details to support the payment.

F. Liability for Uncompleted or Erroneous Transfers.

(1) If an uncompleted or erroneous transfer occurs because SRNS used the Subcontractor's/Supplier's EFT information incorrectly, SRNS remains responsible for --

- (i) Making a correct payment; and
- (ii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because Subcontractor's/Supplier's EFT information was incorrect, or was revised within 30 days of SRNS release of the EFT payment transaction instructions to the bank, and --

- (i) If the funds are no longer under the control of the payment office, SRNS is considered to have made payment and the Subcontractor/Supplier is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, SRNS shall not make payment and the provisions of paragraph D shall apply.

**A.8 PASSAGE OF TITLE AND LIENS**

A. Title to the Supplies shall pass to the Government at the place of delivery to SRNS. If purchased F.O.B. shipping point, delivery to the carrier shall be considered to be delivery to SRNS.

B. Subcontractor/Supplier agrees to furnish the Work free and clear of all liens, claims, and encumbrances. In the event that a lien of any nature shall at any time be filed against the Work or Subcontractor/Supplier or a Subcontractor's/Supplier's facility by any person, firm, or corporation which has supplied equipment, material, services or data, Subcontractor/Supplier agrees promptly, on demand of SRNS and at Subcontractor's/Supplier's expense, to take any and all action necessary to cause any such lien to be released or discharged there from.

Subcontractor/Supplier agrees to save SRNS harmless from all liens, claims, or demands in connection with the Work.

C. Except as otherwise provided in this Order,

(1) Subcontractor/Supplier shall be responsible for the loss or destruction of, or damage to, the Supplies until delivered at the designated delivery point, regardless of the point of inspection;

(2) After delivery to SRNS at the designated point and prior to acceptance or rejection by SRNS, Subcontractor/Supplier shall be responsible for the loss or destruction of or damage to the Supplies unless such loss, destruction, or damage results from negligence of the officers, agents, or employees of SRNS or the Government acting within the scope of their employment; and

(3) Subcontractor/Supplier shall bear all risks as to the rejected Supplies after rejection.

**A.9 ASSIGNMENT**

SRNS may assign this Order to the DOE or to such party as DOE may designate to perform SRNS's obligations hereunder. Upon receipt by Subcontractor/Supplier of written electronic notice that the DOE or a party so designated by the DOE has accepted an assignment of this Order, SRNS shall be relieved of all responsibility hereunder and Subcontractor/Supplier shall thereafter look solely to such assignee for performance of SRNS's obligations. Subcontractor/Supplier shall not assign or transfer this Order or any interest herein, or claims hereunder, without the prior written electronic consent of SRNS or SRNS's assignee.

**A.10 WORKMANSHIP AND MATERIALS**

A. Unless this Order specifies otherwise, the Subcontractor/Supplier represents that all workmanship, supplies and components, including any former Government property identified in this Order are new, including recycled (not used or reconditioned) in conformance with industry standards and are not of such age or so deteriorated as to impair their usefulness or safety. The Subcontractor/Supplier shall not provide material or equipment that contains material that is known to be suspect or counterfeit (see paragraph E below). If the Subcontractor/Supplier believes that furnishing used or reconditioned supplies or components will be in the Government's interest, the Subcontractor/Supplier shall so notify the SRNS Procurement Representative in writing electronically. The Subcontractor's/Supplier's notice shall include a proposal for consideration by SRNS that states the reason for the request to use reconditioned or used supplies or components.

- B. Where items are referred to in the specifications as "equal to" any particular standard, SRNS shall decide the question of equality.
- C. If required elsewhere in this Order, Subcontractor/Supplier shall submit for approval samples of, or test results on, any materials proposed to be incorporated in the Work before making any commitment for the purchase of such materials. Such approval shall not relieve Subcontractor/Supplier of any of its obligations hereunder.
- D. The Subcontractor/Supplier shall perform all work under this Order in a skillful and workmanlike manner by agreeing to utilize only experienced, responsible and capable employees, to include Subtier Subcontractors/Suppliers, in the performance of the work. SRNS may require that the Subcontractor/Supplier remove from the job, employees to include Subtier Subcontractors/Suppliers, who endanger persons or property, or whose continued employment under this Order is inconsistent with the interests of security or safety at the Savannah River Site (SRS).
- E. Suspect or Counterfeit Parts
  - (1) Subcontractors/Suppliers shall supply products at Savannah River Site (SRS) that are not and do not contain suspect/counterfeit parts. A suspect item is an item in which there is an indication by visual inspection, testing, or other information that it may not conform to established government or industry accepted specifications or national consensus standards. A suspect/counterfeit item is any item that is a copy or substitute without legal right or authority to do so, or one whose material, performance, characteristics or identity does not appear to be authentic and is verified to be either counterfeit or fraudulent. Failure by the Subcontractor/Supplier to document material substitution or identify that an item has been refurbished or remanufactured is considered to be fraud, and the item then becomes suspect/counterfeit.
  - (2) If it is determined that a suspect/counterfeit part has been supplied, SRNS will impound the items pending a decision on disposition. The Subcontractor/Supplier may be required to replace such items with items acceptable to SRNS and shall be liable for all costs relating to the impoundment, removal, and replacement. SRNS may also notify the local Department of Energy Office of Inspector General and reserves the right to withhold

payment for the items pending results of the investigation.

#### **A.11 WARRANTY**

- A. Subcontractor/Supplier warrants that the Supplies shall be free from defects in material and workmanship, of the most suitable grade of their respective kinds for the purpose, and comply with all requirements set forth in this Order, until one year after first placed into service by SRNS, or three years after acceptance, whichever first occurs. Subcontractor/Supplier shall correct any nonconformity with this warranty at its sole expense, as directed by SRNS, by promptly: (i) repairing or replacing the nonconforming Supplies specified (and correcting any plans, specifications, or drawings affected); (ii) furnishing SRNS any materials, parts, and instructions necessary to correct or have corrected the nonconformity, or (iii) paying to SRNS a portion of the Order price as is equitable under the circumstances.
- B. Subcontractor/Supplier warrants that the Services shall reflect the industry standards of professional knowledge and judgment, shall be free from defects in workmanship, and shall be in compliance with all requirements of this Order, until one (1) year from the completion of the Services. Subcontractor/Supplier shall correct any nonconformity with this warranty at its sole expense, as directed by SRNS, by promptly (i) re-performing the nonconforming Services or (ii) paying to SRNS a portion of the Order price as is equitable under the circumstances.
- C. If Subcontractor/Supplier fails to perform its obligations promptly under this article, SRNS may perform, or have performed such obligations and Subcontractor/Supplier shall pay SRNS all charges occasioned thereby.
- D. The warranty with respect to corrected Supplies or Services shall be subject to the same terms as the warranty provided for in paragraphs A and B of this article. The warranty for other than corrected or replaced Supplies or Services shall continue until the expiration of such period plus a period equal to the time elapsed between the discovery of the nonconformity and its correction.
- E. Unless installation is an element of the Work, Subcontractor/Supplier shall not be obligated under this article for the costs of removal or reinstallation of any Supplies furnished or items Serviced hereunder from the location of their installation, or for the costs of removal or reinstallation of structural parts or items not furnished by Subcontractor/Supplier hereunder. Subcontractor/Supplier shall in any event bear all packing, packaging, and shipping costs from the



place of delivery to the Subcontractor's/Supplier's plant and return to the place of delivery, and shall bear all risk of loss or damage for the items upon which Services have been performed or Supplies while in transit.

- F. Unless decontamination is an element of the Work, in the event that Subcontractor's/Supplier's costs in correcting any nonconformity under this article are increased solely because the Supplies furnished or items Serviced hereunder must be decontaminated to the level specified in the definition of "radiation area" in 10 CFR 20.202, this Order price shall be equitably adjusted to reflect such additional costs after prompt written electronic notification thereof by Subcontractor/Supplier to SRNS.
- G. The provision of this article shall apply notwithstanding inspection, acceptance, or any other provision of this Order, and shall not limit any other of SRNS's rights and remedies.
- H. Latent Defects. In the event the Subcontractor/Supplier becomes aware of any latent defect(s) in any item(s) furnished under this Order, the Subcontractor/Supplier shall promptly notify the SRNS Procurement Representative. This notice shall provide at a minimum the following information:
  - (1) full description of the item(s);
  - (2) manufacturer, model and/or part number;
  - (3) complete description of the latent defect
  - (4) impact of the defect on the operation of the item(s);
  - (5) action(s) to be taken by SRNS relative to return, re-fit, repair, etc.;
  - (6) date of purchase by SRNS; and,
  - (7) applicable SRNS Order number.

#### **A.12 SUBCONTRACTOR'S/SUPPLIER'S INSPECTION REQUIREMENTS**

Subcontractor/Supplier is responsible for performing, or having performed, all inspections and tests necessary to substantiate that the Supplies or Services furnished under this Order conform to Order requirements, including any applicable technical requirements for specified manufacturers' parts. This article takes precedence over any SRNS inspection and testing required in the specifications, except for specialized inspections or tests specified to be performed solely by SRNS.

#### **A.13 GOVERNMENT PROPERTY**

***NOTE: If the total acquisition cost of all Government property furnished under this Order is \$100,000 or less, Paragraph E of this Article is deleted and the following is substituted in lieu thereof:***

The Subcontractor/Supplier shall be responsible and accountable for all Government property provided under this Order. The Subcontractor/Supplier shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for SRNS inspection at all reasonable times. The Subcontractor/Supplier shall provide an annual inventory listing identifying all Government Property associated with this Order. The inventory shall include the following information for each property item: ID number, description, manufacturer, model number, serial number, acquisition date, acquisition value, condition, location, and primary user.

##### **A. Government Property**

- (1) SRNS shall deliver to the Subcontractor/Supplier, for use in connection with and under the terms of this Order, the Government property described elsewhere in the Order or specifications together with any related data and information that the Subcontractor/Supplier may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government property").
- (2) The delivery or performance dates for this Order are based upon the expectation that Government property suitable for use (except for property furnished "as-is") will be delivered to the Subcontractor/Supplier at the times stated in the Order or if not so stated, in sufficient time to enable the Subcontractor/Supplier to meet the Order delivery or performance dates.
- (3) If Government property is received by the Subcontractor/Supplier in a condition not suitable for the intended use, the Subcontractor/Supplier shall, upon receipt of it, notify the SRNS Procurement Representative detailing the facts and, as directed by the SRNS Procurement Representative and at SRNS's expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written electronic request of the Subcontractor/Supplier, the SRNS Procurement Representative shall make an equitable adjustment as provided in paragraph H of this article.
- (4) If Government property is not delivered to the Subcontractor/Supplier by the required time, the SRNS Procurement Representative shall, upon the Subcontractor's/Supplier's timely written electronic request, make a determination of the delay, if any, caused the

Subcontractor/Supplier and shall make an equitable adjustment in accordance with paragraph H of this article.

**B. Changes in Government Property**

- (1) The SRNS Procurement Representative may, by written electronic notice,
  - (i) Decrease the Government property provided or to be provided under this Order, or
  - (ii) Substitute other Government property for the property to be provided by SRNS, or to be acquired by the Subcontractor/Supplier for the Government, under this Order. The Subcontractor/Supplier shall promptly take such action as the SRNS Procurement Representative may direct regarding the removal, shipment, or disposal of the property covered by such notice.
- (2) Upon the Subcontractor's/Supplier's written electronic request, the SRNS Procurement Representative shall make an equitable adjustment to the Order in accordance with paragraph H of this article, if SRNS has agreed in the Order to make the property available for performing this Order and there is any -
  - (a) Decrease or substitution in this property pursuant to subparagraph B (1) above; or
  - (b) Withdrawal of authority to use this property, if provided under any contract or lease.

**C. Title in Government Property**

- (1) The Government shall retain title to all Government property.
- (2) All Government property and all property acquired by the Subcontractor/Supplier, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this article. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property as being attached to any real property.
- (3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Subcontractor/Supplier for SRNS under this Order shall pass to and vest in the Government when its use in performing this Order commences or when SRNS has paid for it, whichever is earlier, whether or not title

previously vested in the Government.

- (4) If this Order contains a provision directing the Subcontractor/Supplier to purchase material for which SRNS will reimburse the Subcontractor/Supplier as a direct item of cost under this Order -
  - (i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and
  - (ii) Title to all other material shall pass to and vest in the Government upon -
    - (a) Issuance of the material for use in Order performance;
    - (b) Commencement of processing of the material or its use in Order performance; or
    - (c) Reimbursement of the cost of the material by SRNS, whichever occurs first.

**D. Use of Government Property**

The Government property shall be used only for performing this Order, unless otherwise provided in this Order or approved by the SRNS Procurement Representative.

**E. Property Administration**

- (1) The Subcontractor/Supplier shall be responsible and accountable for all Government property provided under this Order and shall comply with DOE Property Management Regulations 41 CFR 109, as in effect on the date of this Order.
- (2) The Subcontractor/Supplier shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR and Subpart 945.5 of the DEAR. The Subcontractor/Supplier shall provide an annual inventory as required in Federal Property Regulation 41 CFR 101 and the Department of Energy Property Management Regulation 41 CFR 109.
- (3) If damage occurs to Government property, the risk of which has been assumed by SRNS or the Government under this Order, SRNS shall replace the items or the Subcontractor/Supplier shall make such repairs as SRNS directs. However, if the Subcontractor/Supplier cannot effect such repairs within the time required, Subcontractor/Supplier shall dispose of the property as directed by the SRNS Procurement Representative. When any property for which SRNS is responsible is

replaced or repaired, the SRNS Procurement Representative shall make an equitable adjustment in accordance with paragraph H of this article.

- (4) The Subcontractor/Supplier understands that the Order price does not include any amount for repairs or replacement for which SRNS is responsible. Repair or replacement of property for which the Subcontractor/Supplier is responsible shall be accomplished by the Subcontractor/Supplier at its own expense.

F. Access

SRNS and the Government and all their designees have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

G. Risk of loss

Unless otherwise provided in this Order, the Subcontractor/Supplier assumes the risk of and shall be responsible for, any loss or destruction of, or damage to Government property upon its delivery to the Subcontractor/Supplier or upon passage of title to the Government under paragraph C of this article. However, the Subcontractor/Supplier is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this Order.

H. Equitable Adjustment

When this article specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes article. When appropriate, the SRNS Procurement Representative may initiate an equitable adjustment in favor of SRNS. The right to an equitable adjustment shall be the Subcontractor's/Supplier's exclusive remedy. SRNS and the Government shall not be liable to suit for breach of contract for

- (1) Any delay in delivery of Government property;
- (2) Delivery of Government property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government property; or
- (4) Failure to repair or replace Government property for which SRNS or the Government is responsible.

I. Final Accounting and Disposition of Government Property

Upon completing this Order, or at such earlier dates as may be fixed by the SRNS Procurement Representative, the Subcontractor/Supplier shall

submit, in a form acceptable to the SRNS Procurement Representative, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this Order or delivered to SRNS. The Subcontractor/Supplier shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the SRNS Procurement Representative. The net proceeds of any such disposal shall be credited to the Order price or shall be paid to SRNS as the SRNS Procurement Representative directs.

J. Abandonment and Restoration of Subcontractor's/Supplier's Premises

Unless otherwise provided herein, SRNS -

- (1) May abandon any Government property in place, at which time all obligations of SRNS and the Government regarding such abandoned property shall cease; and
- (2) Has no obligation to restore or rehabilitate the Subcontractor's/Supplier's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon Order completion). However, if the Government property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph H of this article may properly include restoration or rehabilitation costs.

K. Communications

All communications under this article shall be submitted in writing electronically.

L. Overseas Orders

If this Order is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government property" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government property," respectively.

**A.14 PUBLIC RELEASE OF INFORMATION**

Information, data, photographs, sketches, advertising, announcements, denial, or confirmation of same, or items of a similar nature, relating to this Order, which Subcontractor/Supplier desires to release or publish, shall be submitted to SRNS for approval eight weeks prior to the desired release date. As part of the approval request, Subcontractor/Supplier shall identify the specific media to be used as well as other pertinent details of the proposed release. All releases by Subcontractors/Suppliers must have the prior approval of SRNS. Subcontractor/Supplier shall include all provisions of this article including this sentence in all

Subcontracts under this Order. SRNS's approval shall not be unreasonably withheld.

#### **A.15 FEDERAL, STATE, AND LOCAL TAXES**

- A. (1) "After-imposed Federal tax" as used in this article, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the Order date but whose exemption was later revoked or reduced during this Order period, on the transactions or property covered by this Order that the Subcontractor/Supplier is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the Order date. It does not include social security tax or other employment taxes.
- (2) "After-relieved Federal tax" as used in this article, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this Order, but which the Subcontractor/Supplier is not required to pay or bear, or for which the Subcontractor/Supplier obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the Order date.
- (3) "All applicable Federal, State, and local taxes and duties" as used in this article, means all taxes and duties, in effect on the Order date, that the taxing authority is imposing and collecting on the transactions or property covered by this Order.
- (4) "Order date" as used in this article means the date set for bid opening or, if this is a negotiated Order or modification, the effective date of this Order or modification.
- B. Subcontractor/Supplier shall not collect an increment for South Carolina sales or use tax from SRNS for the materials and/or services provided under this Order beyond such taxes paid by the Subcontractor/Supplier to its Subcontractors/Suppliers.
- C. The Order price includes all applicable Federal, State, and local taxes and duties. (See paragraph B. above.)
- D. The Order price shall be increased by the amount of any after-imposed Federal tax, provided Subcontractor/Supplier warrants in writing electronically that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the Order price, as a contingency, reserve or otherwise.
- E. The Order price shall be decreased by the amount of any after-relieved Federal tax.

- F. The Order price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that Subcontractor/Supplier is required to pay or bear, or does not obtain a refund of, through Subcontractor's/Supplier's fault, negligence, or failure to follow instructions of SRNS.
- G. No adjustment shall be made in the Order price under this article unless the amount of the adjustment exceeds \$100.
- H. Subcontractor/Supplier shall promptly notify SRNS of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the Order price and shall take appropriate action as SRNS directs.

#### **A.16 TERMINATION FOR CONVENIENCE OF SRNS**

SRNS may, by written electronic notice, terminate this Order, in whole or in part, when it is in SRNS's interest to do so. If this Order is so terminated, the rights, duties, and obligation of the parties, including compensation to Subcontractor/Supplier, shall be in accordance with Part 49 of the FAR as supplemented or modified by Part 949 of the DEAR in effect on the date of this Order.

#### **A.17 DISPUTES**

- A. Subcontractor/Supplier shall not be entitled to and neither SRNS nor the Government shall be liable to the Subcontractor/Supplier or its Subtier Subcontractors/Suppliers for damages in tort (including negligence), or contract, or otherwise, except as specifically provided in this Order.
- B. The Parties shall attempt to settle any claim or controversy arising from this Order through consultation and negotiations in good faith and a spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator chosen by the Parties within thirty (30) days after written electronic notice by one party demanding mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, and both Parties will share the costs of the mediation equally. Any dispute which cannot be resolved between the Parties through negotiation or mediation shall be resolved by litigation in a court of competent jurisdiction located in the State of South Carolina. Determination of any substantive issue of law shall be according to the Federal common law of Government Contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government; if there is no applicable Federal Government contract law, the

law of the State of South Carolina shall apply in the determination of such issues.

- C. During the pendency of a dispute, the Subcontractor/Supplier shall proceed diligently with performance of all terms of this Order. The Subcontractor's/Supplier's consent to so proceed shall not restrict or otherwise affect the Subcontractor's/Supplier's right to contest any claim.

#### **A.18 PRICING OF ADJUSTMENTS**

When costs are a factor in any determination of an Order price adjustment pursuant to the "Changes, Extras, and Substitutions" article or any other provisions of this Order, such costs shall be in accordance with the contract cost principles and procedures in Part 31 of the FAR as supplemented or modified by DEAR Part 931, in effect on the date of this Order.

#### **A.19 COMPLIANCE**

- A. Subcontractor/Supplier shall comply with all applicable federal, state, and local laws and ordinances and all pertinent lawful orders, rules, and regulations, including new provisions of 10 CFR 851 relating to Health and Safety. Compliance shall be a material requirement of this Order. Except as otherwise directed by SRNS, Subcontractor/Supplier shall procure without additional expense to SRNS, all necessary permits or licenses.
- B. Subcontractor/Supplier warrants that any and all Work performed and/or Supplies furnished shall comply with all requirements of the Occupational Safety and Health Act of 1970, as the same may be amended from time to time and including all regulations adopted pursuant to such Act, and shall comply with all requirements of any applicable health or safety statute or regulation of any state or local government agency having jurisdiction in the location to which Supplies are to be shipped or Work is to be performed pursuant to this Order.
- C. Subcontractor/Supplier warrants that each and every chemical substance delivered under this Order shall, at the time of sale, transfer or delivery, be on the list of chemical substances compiled and published by the Administrator of the Environmental Protection Agency pursuant to Section 8(b) of the Toxic Substances Control Act (Public Law 94-469).
- D. Subcontractor/Supplier - Staff Augmentation Services

*(Paragraphs D – J applies to Staff Augmentation Services)*

Subcontractors/Suppliers shall comply with all applicable federal, state, and local laws and

ordinances and all pertinent lawful orders, rules, and regulations, including provisions of 10 CFR 851. Compliance shall be a material requirement of this Agreement/Subcontract. Except as otherwise directed by SRNS, Subcontractor/Supplier shall procure without additional expense to SRNS, all necessary permits or licenses. DEAR Clause

970.5223-1 Integration of Environment, Safety, and Health into Work Planning and Execution (DEC 2000) is incorporated into the Subcontract by reference. Compliance by Subcontractor/Supplier to SRNS's Worker Safety and Health Program (WSHP) [as implemented by Integrated Safety Management System (ISMS)] shall satisfy the requirements of this DEAR clause and 10 CFR 851.

- E. The Subcontractor/Supplier employees shall take all reasonable precautions in the performance of work under this Subcontract to protect the environment, safety and health of themselves, site employees and members of the public. SRNS procedures provide authority to call a time-out/stop work when unsafe conditions are observed and/or employee actions are likely to cause injury to them, other personnel, or cause damage to SRS property or the environment. Subcontractor/Supplier shall ensure that its employees are aware of this authority and understand they have the same authority as SRNS employees to call a timeout/ stop work while working at SRS. The SRNS Procurement Representative shall notify the Subcontractor/Supplier in writing electronically of any noncompliance with the provisions of this article and corrective action to be taken.
- F. Upon assignment, SRNS will be responsible to provide Staff Augmentation employee's with a medical evaluation. In addition, SRNS will be responsible for an exit medical evaluation, when required, on employees with known occupational illnesses, injuries and/or documented or presumed exposure and when required by OSHA regulations. All diagnostic /monitoring exams and return to work (after an absence of 24 work hours) exams are to be provided through the Subcontractor/Supplier.
- G. Medical results will be provided to the staff augmentation employees.
- H. The on-site Medical Surveillance program will be provided by SRNS Medical or 3<sup>rd</sup> party designee, based on the work scope hazards. The Subcontractor's/Supplier's corporate occupational medicine program must be in compliance with all other 10 CFR 851 requirements.
- I. Site Reporting Requirements

The Subcontractor/Supplier (staff augmentation) personnel shall immediately notify the STR/End User or the SRNS Procurement Representative of any event or condition that may require reporting to DOE. Further, the Subcontractor/Supplier shall cooperate with any SRNS or DOE critique, analysis, or investigation and complete necessary reports for such events/conditions. Events/conditions that require reporting to DOE are defined in DOE Manual 231.1-2 and can include, but not limited to:

- (1) Operational emergencies,
  - (2) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,
  - (3) Any on-the-job injury where a Subcontractor/Supplier employee is taken offsite for something other than observation. The notification requirement applies to any person who goes offsite for prompt medical treatment of any type. The mode of transportation (ambulance, personal vehicle, etc.) is not pertinent – any offsite transfers must be reported immediately,
  - (4) Any violation of Lockout/Tagout controls where there are no credible barriers left between the worker, and the energy source regardless of whether or not there was an injury,
  - (5) Fires/explosions,
  - (6) Hazardous energy control failures,
  - (7) Operations shutdown directed by management for safety reasons,
  - (8) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.,
  - (9) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations,
  - (10) Loss damage, theft, or destruction to government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),
  - (11) Spread of radioactive contamination or loss of control of radioactive materials,
  - (12) Personnel radioactive contamination's or exposures, and
  - (13) Violations of procedures.
- J. Immediate notification is required of such events to ensure SRNS meets its commitment for 30 minute notification to appropriate DOE authorities. The Subcontractor/Supplier employee shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe

condition. The Subcontractor's/Supplier's employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the environment, safety and health requirements of this Subcontract.

#### **A.20 RIGHTS TO PROPOSAL DATA (TECHNICAL)**

Except for the technical data contained on those pages of Subcontractor's/Supplier's proposal which are specifically identified in the Order with specific reference to this article and asserted by Subcontractor/Supplier as being proprietary data, it is agreed that, as a condition of the award of this Order and notwithstanding the provisions of any notice appearing on the proposal or elsewhere, SRNS and the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this Order is based.

#### **A.21 SRNS POLICY ON OPPORTUNITY**

All Subcontractors, vendors and Suppliers are notified that it is the policy of the SRNS to provide equal employment opportunity and to adhere to federal, state and local laws pertaining thereto. Appropriate action will be taken on the part of all SRNS Subcontractors, vendors and Suppliers to insure adherence to such laws.

#### **A.22 DEFAULT**

- A. (1) SRNS may, subject to paragraphs C and D below, by written electronic notice of default to Subcontractor/Supplier, terminate this Order in whole or in part if Subcontractor/Supplier fails to:
  - (i) Deliver the Supplies or to perform the Services within the time specified in this Order or any extension;
  - (ii) Make progress, so as to endanger performance of this Order (but see subparagraph A (2) below); or
  - (iii) Perform any of the other provisions of this Order (but see subparagraph A (2) below).
- (2) SRNS's right to terminate this Order under subdivisions (1)(ii) and (1)(iii) above, may be exercised if Subcontractor/Supplier does not cure such failure within 10 days (or more if authorized in writing electronically by SRNS) after receipt of the notice from SRNS specifying the failure.
- B. If SRNS terminates this Order in whole or in part, it may acquire, under the terms and in the manner SRNS considers appropriate, supplies or services similar to those terminated, and

Subcontractor/Supplier will be liable to SRNS for any excess costs for those supplies or services. However, Subcontractor/Supplier shall continue the Work not terminated.

- C. Except for defaults of Subcontractor's/Supplier's at any tier, Subcontractor/Supplier shall not be liable for any excess costs if the failure to perform this Order arises from causes beyond the control and without the fault or negligence of Subcontractor/Supplier. Examples of such causes include
- (1) Acts of God or of the public enemy,
  - (2) Acts of the Government in either its sovereign or contractual capacity,
  - (3) Fires,
  - (4) Floods,
  - (5) Epidemics,
  - (6) Quarantine restrictions
  - (7) Strikes,
  - (8) Freight embargoes, and
  - (9) Unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of Subcontractor/Supplier.
- D. If the failure to perform is caused by the default of a Subcontractor/Supplier at any tier, and if the cause of the default is beyond the control of both Subcontractor/Supplier and the Subcontractor/Supplier and without the fault or negligence of either, Subcontractor/Supplier shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for Subcontractor/Supplier to meet the required delivery schedule.
- E. If this Order is terminated for default, SRNS may require Subcontractor/Supplier to transfer title to the Government and deliver to SRNS, as directed by SRNS, any (1) completed Supplies, and (2) partially completed Supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this article) that Subcontractor/Supplier has specifically produced or acquired for the terminated portion of this Order. Upon direction of SRNS, Subcontractor/Supplier shall also protect and preserve property in its possession in which SRNS or the Government has an interest.
- F. SRNS shall pay the Order price for completed Supplies delivered and accepted. Subcontractor/Supplier and SRNS shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the

Disputes article. SRNS may withhold from these amounts any sum it determines to be necessary to protect itself against loss because of outstanding liens or claims of former lien holders.

- G. If, after termination, it is determined that Subcontractor/Supplier was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of SRNS.
- H. The rights and remedies of SRNS in this article are in addition to any other rights and remedies provided by law or under this Order.

#### **A.23 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA**

- A. Subcontractor/Supplier agrees to submit a Material Safety Data Sheet (for all hazardous materials/chemicals to the SRNS Procurement Representative / STR/End User for approval before chemicals are brought onto SRS. This obligation applies to all materials delivered under this Subcontract which will involve exposure to hazardous materials/chemicals or items containing these materials/chemicals.
- B. All chemical containers shall be clearly labeled per OSHA standards. Chemicals not in an original container shall also be properly labeled with the product name and hazard markings per the Material Safety Data Sheet on file. Immediate use containers such as painter's pail, etc., are exempt from labeling requirements.
- C. Neither the requirements of this article nor any act or failure to act by SRNS or the Government shall relieve Subcontractor/Supplier of any responsibility or liability for the safety of SRNS, Government, Subcontractor/Supplier, or Subcontractor personnel or property.
- D. Subcontractor/Supplier shall comply with applicable Federal, state, and local laws, codes, ordinances, and regulations (including the acquisition of licenses and permits) in connection with hazardous materials/chemicals.
- E. The Government's and SRNS's rights in data furnished under this Order with respect to hazardous materials/chemicals are as follows:
- (1) To use, duplicate, and disclose any data to which this article is applicable. The purposes of this right are to (i) apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials/chemicals; (ii) obtain medical treatment for those affected by the material/chemical; and (iii) have others

use, duplicate, and disclose the data for SRNS and the Government for these purposes.

- (2) To use, duplicate, and disclose data furnished under this article, in accordance with subparagraph E (1) above, in precedence over any other article of this Order providing for rights in data.
  - (3) That SRNS and the Government are not precluded from using similar or identical data acquired from other sources.
  - (4) That the data shall not be duplicated, disclosed, or released outside of SRNS or the Government, in whole or in part for any acquisition or manufacturing purpose, if the following legend is marked on each piece of data to which this article applies: "This is furnished under United States Government Contract No. DE-AC09-08SR22470 and shall not be used, duplicated, or disclosed for any acquisition or manufacturing purpose without the permission of SRNS. This legend shall be marked on any reproduction of this data."
  - (5) That Subcontractor/Supplier shall not place the legend or any other restrictive legend on any data which
    - (i) Subcontractor/Supplier previously delivered to SRNS or the Government without limitations or
    - (ii) Should otherwise be delivered without limitations.
- F. Subcontractor/Supplier shall insert this article, including this paragraph F, with appropriate changes in the designation of the parties, in Subcontracts at any tier (including Purchase designations under this Order involving hazardous materials/chemicals.

#### **A.24 PATENTS AND COPYRIGHTS**

***NOTE: This article shall apply only if Article C.2 of these General Provisions is not applicable.***

- A. Subcontractor/Supplier shall, at its own expense, defend any suit or proceeding brought against SRNS and/or its vendors, mediate and immediate, so far as based on any allegation that any goods, material, equipment, device, item, method, or article (hereinafter referred to as "Product") or any part thereof furnished hereunder constitutes an infringement of any claim of any patent or violation of any copyright.
- B. In case the product or any part thereof furnished hereunder is held, in any suit or proceeding so defended to constitute infringement and its use is enjoined, Subcontractor/Supplier shall, at its option and its own expense, in a timely manner either (i) procure for SRNS and its vendors, mediate and immediate, the right to continue using

product or part thereof, or (ii) replace it with a substantially equivalent non-infringing product, or (iii) modify it so it becomes non-infringing but is substantially functionally equivalent.

#### **A.25 JOINT INTELLECTUAL PROPERTY RIGHTS**

- A. "Joint Intellectual Property Rights" shall mean any work under the Subcontract, which:
  - (1) Results from the involvement of at least one employee/participant from each of SRNS and the Subcontractor/Supplier; and
  - (2) The subject matter of which is capable of protection under domestic or foreign law, including but not limited to, patents, copyrights, trademarks, or mask works.
- B. As to Joint Intellectual Property Rights, in which SRNS has a joint ownership interest, the Subcontractor/Supplier agrees to negotiate in good faith with SRNS a Memorandum of Agreement to resolve issues of participation in protection and commercialization.

#### **A.26 COMPLIANCE WITH EMPLOYEE CONCERNS**

- A. Subcontractors/Suppliers shall ensure Subcontractor's/Supplier's employees are aware of the DOE-SRS and SRNS Employee Concerns Programs (ECP) and how to use the program by performing the following:
  - (1) Ensure employees are provided with information on the DOE-SRS and SRNS ECPs during initial orientation and annual training.
  - (2) Ensure that posters identifying the DOE-SRS and SRNS ECP telephone "hotline" numbers are displayed in conspicuous locations throughout the worksite. SRNS will provide posters, as necessary.
  - (3) Inform Subcontractor/Supplier employees of the availability of the DOE-SRS ECP in case of dissatisfaction or lack of confidence with other reporting systems.
  - (4) Ensure managers and supervisors are aware of the prohibition of any reprisal against employees who have or are believed to have raised or reported concerns.
- B. Subcontractors/Suppliers must immediately notify the STR/End User or the Procurement Representative of any employee concern involving:
  - (1) A condition which constitutes an imminent threat to the health and safety of site personnel or to the general public.



- (2) Circumstances which would cause adverse public reaction or receive local media attention.
- (3) Allegations of reprisal.
- C. Subcontractors/Suppliers shall investigate any employee concern referred by the STR/End User and inform the STR/End User of investigation results within 7 days of receipt of concern. Inform the STR/End User in writing electronically if an extension to this 7-day timeframe is required, along with status of investigation to date and actions pending to closure. The investigation shall be conducted to the satisfaction of the SRNS Procurement Representative.
- C. Upon request of SRNS or the Government, the Subcontractor/Supplier agrees to sign an agreement identical, in all material respects and in a form satisfactory to SRNS and/or the Government, with each company supplying information and/or access to particular facilities to the Subcontractor/Supplier or Subtier Subcontractor/Supplier under this Subcontract, and to supply a copy of such agreement to SRNS. Upon request of SRNS, the Subcontractor/Supplier shall supply SRNS with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Subcontractor/Supplier received such information.

#### **A.27 CONFIDENTIALITY OF INFORMATION**

- A. To the extent that work under this Subcontract requires that the Subcontractor/Supplier and Subtier Subcontractors/Suppliers be granted access to confidential or proprietary business, technical or financial information belonging to the Government, SRNS or other companies, the Subcontractor/Supplier shall, maintain such information in confidence and agrees not to further disseminate such information to any third parties unless specifically authorized by SRNS or the Purchasing Representative in writing. The foregoing obligations, however, shall not apply to:
  - Information which is or becomes available to the public through no fault of the Subcontractor/Supplier;
  - Information which the Subcontractor/Supplier can demonstrate by written record was previously known to them and was not acquired directly or indirectly from the government or other companies subject to any obligations of confidentiality;
  - Information which the Subcontractor/Supplier can demonstrate by written record was independently developed by the Subcontractor/Supplier independent of any disclosure under this Subcontract
- B. The Subcontractor/Supplier shall obtain the written electronic agreement, in a form satisfactory to SRNS, of each Subcontractor/Supplier employee or Subtier Subcontractor/Supplier permitted access to such confidential information, whereby the Subcontractor/Supplier employee or Subtier Subcontractor/Supplier agrees they will not discuss, or disclose any such information or data to any person or entity except those within their organization having a need to know to accomplish the purpose of this Subcontract. C.

D. Subcontractor/Supplier will indemnify and hold SRNS harmless from any and all liabilities, claims, demands, actions, costs, damages and any expenses relating thereto (including but not limited to reasonable attorney's fees) arising from any unauthorized disclosure of information, by any of its directors, officers, employees, agents, Subcontractors/Suppliers, Subtier Subcontractors/Suppliers or permitted assigns.

#### **A.28 WORKPLACE SUBSTANCE ABUSE PROGRAMS**

- A. Fitness for Duty
- (1) Subcontractor/Supplier and its Subtier Subcontractors/Suppliers are required to comply with this Workplace Substance Abuse Program article, which addresses the Subcontractor/Supplier portion of SRNS "Workplace Substance Abuse Program Plan." The Subcontractor/Supplier shall advise employees and Subtier Subcontractors/Suppliers that it is the policy of SRNS to prohibit the use, possession, sale and distribution of alcohol, drugs or other controlled substance within the limits of the Savannah River Site (SRS), and/or any SRS off-site facilities, and to prohibit the presence of individuals who have such substances in the body for non-medical reasons. In order to ensure that SRNS work sites are free of illegal drugs and alcohol, all personnel and Subcontractor/Supplier employees shall be tested in accordance with the requirements of DEAR 970.5223-4 and 10 CFR 707, "Workplace Substance Abuse Program at DOE Sites". Testing includes initial "Pre-Access" testing and "Random" testing for the presence of illegal drugs and alcohol. Any Subcontractor/Supplier employee who is found in violation of the policy may be removed or barred from the site.
- (2) The Subcontractor/Supplier agrees to advise its

employees and Subtier Subcontractors/Suppliers of the above policy prior to assignment to the Site and to maintain documentation that such advice has been given.

B. Pre-Access Testing

- (1) Subcontractor's/Supplier's employees who perform work on SRS premises for more than 10 calendar days per year, shall successfully pass an alcohol and drug screen within 21 calendar days prior to obtaining a SRS access badge. The Subcontractor/Supplier is responsible for all costs expended.

The Subcontractor /Supplier is responsible for:

1. Ensuring Subcontractor/Supplier employees receive drug and alcohol testing within 21 days prior to reporting to SRS.
2. Ensuring the drug testing is performed by a medical facility or laboratory that meets the following criteria:
  - The testing facility is a certified laboratory(refer to the following website: [http://workplace.samhsa.gov/DrugTesting/Level\\_1\\_Pages/LstClab101106.html](http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/LstClab101106.html)) and meets the Department of Health and Human Services (HHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11970);
  - The testing facility uses the cutoff concentrations for drug tests as established in Subpart C, Section 3.4 of the HHS guideline and is listed as an approved laboratory facility as per the guideline;
  - The laboratory analysis of urine drug samples is performed in accordance with established HHS standards. INSTANT OR RAPID DRUG SCREENS are not acceptable.
3. Maintaining the original copy of all substance abuse testing results of all

personnel who perform work on SRS premises.

4. Initial "Pre-Access" drug and alcohol tests results must be submitted from the Subcontractor/Supplier on the PF-3 Confirmation Statement, which is available for download from the external website at [http://www.srs.gov/general/busiops/PMMD/SRNS\\_general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm) under Certifications & Other Documents. This Confirmation Statement provides documentation from the Subcontractor's/Supplier's Medical Review Officer (MRO) of pre-access drug and alcohol testing results and must be emailed to the following address: [Badgeoffice@srs.gov](mailto:Badgeoffice@srs.gov) prior to Subcontractor employee's access to SRS premises. The documentation must include the following information:
  - i. Name and Social Security number of the individual tested;
  - ii. Confirmation statement from the Subcontractor's/Supplier's MRO that the results show Negative for drugs (i.e.: below the cut off levels in accordance HHS (53FR11970) Mandatory Guidelines for Workplace Drug Testing Programs);
  - iii. Confirmation statement from the Subcontractor's/Supplier's MRO of a Negative alcohol screening that is less than 0.02 Breath Alcohol Content (BAC) (i.e.: below the cut off levels in accordance with Department of Transportation (DOT) Guidelines for Breath Alcohol Testing 49 CFR 40);

iv. Name and Address of Certified Laboratory;

v. Name and Contact Information for the Subcontractor's/Supplier's MRO.

- (2) The Subcontractor/Supplier agrees to advise its employees and Subtier Subcontractors/Suppliers that it is the policy of SRNS that: (1) the manufacture, dispensation or sale, offer for sale, purchase, use, transfer, or possession of alcohol and illegal drugs on SRS or US Department of Energy (Owner) premises is prohibited; (2) employees, while on the SRS premises, are prohibited from being under the influence of alcohol ("Under the Influence" means the employee is affected by alcohol in any detectable manner) or impaired by drugs; (3) entry onto the SRS premises constitutes consent to an inspection of the employee and his or her vehicle as well as their personal effects while entering, on, or leaving premises; (4) any employee who is found in violation of this policy or who refuses to permit an inspection may be removed or barred from the SRS premises at the discretion of SRNS. As used herein, "SRS premises" means the property, leased or otherwise, including owned project site locations in which SRNS business is being conducted, and owned or rented vehicles and/or equipment is being operated.

For quality assurance purposes, SRNS may request and review any/all records associated with the Subcontractor/Supplier or employee drug and alcohol testing. The Subcontractor/Supplier agrees to secure the written consent of employees to release results of substance abuse tests (breath alcohol and urine) to the designated SRNS representative.

- (3) The Subcontractor/Supplier agrees to comply with and secure the compliance of its employees and Subtier Subcontractors/Suppliers of random, occurrence and/or for cause substance abuse testing. In the event of a "positive" finding (above cut off threshold) for drugs or alcohol, the Subcontractor/Supplier agrees to promptly remove such individual from the SRS and return his or her badge to the SRNS Badging Office. Any positive finding will result in denial of site access for 12 months for the Subcontract/Supplier employee. In the event of a refusal, the Subcontractor's employee

may be terminated for cause and the individual will be refused access to the site.

Occurrence testing additionally requires the following:

If an injury /illness is the result of an occupational incident that requires recordable medical treatment, as defined by OSHA, then drug and alcohol testing is required. In addition, if an occupational incident involves damage to government vehicle or property or Subcontractor equipment then drug and alcohol testing is required. SRNS will require the Subcontractor/Supplier to have their employee's drug and alcohol tested on the day of the injury, illness or incident. Subcontractor /Supplier shall submit testing results, via a secure fax machine to 803.557.4076, SRS Medical – Drug and Alcohol Testing (DAT) department. The cost of testing shall be at the Subcontractor/supplier's expense.

- (4) Subcontractor's/Supplier's employees who are required to obtain a security clearance may be required to successfully pass an additional alcohol and drug screening as required in the Security Requirements article of this order.

C. Suitability for Employment

- (1) Subcontractor/Supplier employees, including Subtier Subcontractors/Suppliers, who are to be badged to permit SRS access, must successfully complete the Suitability for Employment process. As part of this process, the Subcontractor/Supplier agrees to advise its employees and Subtier Subcontractors/Suppliers that they will be required to complete certain forms, which authorize background investigations. These forms shall be submitted during the badging process.
- (2) Subcontractor/Supplier employees will be issued a photo badge and allowed site access on the first reporting day. In the event a Subcontractor/Supplier employee subsequently fails to successfully complete the background investigation, the Subcontractor/Supplier agrees to promptly remove such individual from the site and to return the badge to the SRNS Badging Office.
- (3) Subcontractor/Supplier agrees to advise its employees of the above requirement prior to assignment to the SRS and to maintain documentation that such advice has been given.

## **A.29 BADGING REQUIREMENTS**

### **A. Photo Badge**

(1) Subcontractor/Supplier employees may be issued a site access photo badge for a period not to exceed one year. To obtain a Photo Badge, Subcontractor/Supplier employees and any Subtier Subcontractor/Supplier employees must be processed through SRNS's Subcontract Badging Procedure and are subject to investigation by Governmental authorities. All badges must be returned or accounted for prior to final payment. All Subcontractor/ Supplier employees must be at least 18 years old.

(2) Subcontractor/Supplier employees and any Subtier Subcontractor/Supplier employees shall complete Subcontractor/Supplier Employee Data Sheet and Fingerprint Cards. If a long term badge is required (period greater than six (6) months) the employee will also be required to complete Standard Form (SF) 85, "Questionnaire for Non-Sensitive Positions", and form Optional Form 306, "Declaration for Federal Employment". These forms are required for the Governments use in conducting background investigations per Homeland Security Presidential Directive HSPD-12. Copies of these forms are available on the SRNS Internet Home Page at [http://www.srs.gov/general/busiops/PMMD/SRNS\\_general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm).

(3) Subcontractor/Supplier will observe the following badging procedure for processing their employees through security orientation:

(i) A minimum of two (2) working days prior to the start of the badging and orientation process, Subcontractor/Supplier shall transmit the following information to the Subcontract Technical Representative (STR) (or the End User if an STR is not appointed for this order):

- Subcontract Number;
- Subcontractor/Supplier Employee Name;

- Subcontractor/Supplier Employee Address;

- Subcontractor/Supplier Employee Social Security Number;

- Subcontractor/Supplier Employee Date of Birth;

- Subcontractor/Supplier Employee's Phone Number;

(ii) Subcontractor/Supplier employees shall report to SRS Building 703-46A at SRS Road 1, approximately two miles east of SC Highway 125 in Jackson, SC.

(iii) Each Subcontractor/Supplier employee must successfully pass General Employee Training (GET) prior to undergoing the Photo Badging procedure. See Article titled "General Employee Training and Annual Refresher Training for Subcontract Employees". GET is given on Monday of each week in the Jackson, SC municipal building, and should be scheduled through the STR or End-user well in advance of the desired date in order to assure placement.

(iv) The orientation and badging process will take approximately four (4) hours.

(4) The maximum duration that Supplier/Subcontractor employees will be issued a site access badge is one (1) year. Supplier/Subcontractor employees requiring a new badge will report to the Badge Office and repeat the badging process.

(5) If Work under this Subcontract is to be performed in security areas, all personnel will be required to sign in and out at security gates and are subject to a search of their person and belongings at entrances to or exit from the area.

B. **Temporary Badge** (typically for visitors and short term personnel).

- (1) Temporary badges are valid for a maximum of 10 calendar days per person in a calendar year. To avoid unnecessary expiration, these badges should be returned to the badge office immediately upon completion of need.
- (2) Two working days prior to the need date, Subcontractor/Supplier shall transmit the following information to the STR/End User
  - Subcontract Number;
  - Subcontractor/Supplier Employee Name;
  - Subcontractor/Supplier Employee Address;
  - Subcontractor/Supplier Employee Social Security Number;
  - Subcontractor/Supplier Employee Date of Birth;

Subcontractor/Supplier Employee's Phone Number; (3) The Assigned Competent Person (ACP) (Subcontractor/Supplier or SRNS employee) shall perform Task Analysis of scope to be performed and identify any applicable contractual task specific checklist(s) from the Subcontractor's/Supplier's accepted Worker Protection Plan or SRNS's Focused Observation Database if a WPP is not required by the terms of this Order.

- (4) ACP shall provide advance copy of any task specific safety checklist(s) to personnel seeking temporary badges.
- (5) Badge Office provides initial security briefing, issues registration card and obtains acknowledgement signature, issues "maroon" Visitors Badge for duration requested by STR/End User.
- (6) ACP reviews any applicable checklist(s) and performs focused observations as directed by the STR/End User.
- (7) Upon completion of scope, return badge to Badge Office upon exiting SRS.

C. **Identity Verification.**

- (1) In order to receive a photo or temporary badge for entry to SRS, Subcontractor/Supplier employees, except delivery personnel (see

subparagraph (2) below), will be required to present two specific forms of identification from the "List of Acceptable Documents" (Department of Homeland Security Form I- 9, copy available on the SRNS Internet Home Page. At least one of the documents selected from the list must be a valid State or Federal government-issued picture ID.

- (2) Vendor Delivery Personnel. Unbadged personnel seeking a temporary badge for material/equipment deliveries will be required to present one form of picture identification that will verify their identity, such as a valid state driver's license that includes a photograph. Delivery personnel shall enter the site at the Aiken Barricade located approximately one (1) mile south of SC Highway 278, and will be escorted at all times to the delivery location and back to the entrance barricade by Wackenhut Services, Inc., assigned escorts, or by Assigned Competent Persons (SRNS or Subcontractor/Supplier).

- D. If the Subcontractor/Supplier or any Subtier Subcontractor/Supplier should independently suspend or remove an employee from work at the Savannah River Site (SRS) for unsafe acts or behavior, the Subcontractor/Supplier shall immediately notify the STR/End User, return the employee's badge to the STR/End User, and provide the STR/End User with written notification of the employee's name and reason(s) for such suspension or removal.

**A.30 SOUTH CAROLINA TAX REQUIREMENTS FOR NONRESIDENTS**

Non-resident Subcontractors/Suppliers conducting a business or performing personal services of a temporary nature within South Carolina are required to register with the South Carolina Department of Revenue in accordance with Title 12 of the Code of Laws of South Carolina, sections 12-8-540 & 12-8-550. Proof of registration must be submitted to [ASG@srs.gov](mailto:ASG@srs.gov) and the SRNS Procurement Representative prior to award.

**A.31 OZONE DEPLETING SUBSTANCE**

Without limiting any of the other Articles herein, Subcontractor/Supplier warrants that all of the supplies furnished under this Order have been completely and accurately labeled pursuant to the requirements of 40

CFR Part 82, "Protection of Stratospheric Ozone", or those such supplies do not require such labeling.

#### **A.32 REPORTING OF ROYALTIES**

If any royalty payments are directly involved in this Order or are reflected in the Order price, Subcontractor/Supplier agrees to report in writing electronically to SRNS during the performance of this Order and prior to its completion or final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this Order together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which the royalties are to be paid. The approval of DOE or SRNS of any individual payments or royalties shall not preclude the Government or SRNS at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payment is made. The provision of this article shall be included in all Subcontracts that are expected to exceed \$25,000.

#### **A.33 RESERVED**

#### **A.34 SUBCONTRACTOR'S/SUPPLIER'S LIABILITY FOR FINES AND PENALTIES**

- A. Subcontractor/Supplier is liable to SRNS for fines and penalties assessed by any governmental entity against SRNS or DOE as a result of Subcontractor's/Supplier's failure to perform its work under the Order in compliance with the requirements of the Order.
- B. Subcontractor/Supplier shall indemnify, defend and hold harmless SRNS and DOE from and against any and all claims, demands, actions, causes of action, suits, damages, expenses, including attorney's fees, and liabilities whatsoever resulting from or arising in any manner on account of the assessment of said fines and penalties against SRNS or DOE.

#### **A.35 FOREIGN NATIONALS**

***NOTE: As used in this Article, the term "Foreign National" is defined to be a person who was born outside the jurisdiction of the United States, is a citizen of a foreign government and has not been naturalized under U.S. law.***

- A. The Subcontractor/Supplier shall obtain the approval of SRNS, in writing, electronically, prior to any visit to a DOE or SRNS facility by any Foreign National in connection with work being performed under this Order, in accordance with the requirements of DOE Order 142.3, Unclassified Foreign Visits and Assignments Program. Visits

are normally for the purpose of technical discussions, orientation, observation of projects or equipment, training, subcontract service work, including delivery of materials, or for courtesy purposes. The term "visit" also includes officially-sponsored attendance at a DOE or SRNS event off-site from the DOE/SRNS facility, but does not include off-site events and activities open to the general public. Subcontractors/Suppliers should be aware that required forms and documents necessary for approval of visits by Foreign Nationals should be submitted to the SRNS Procurement Representative at least four (4) to six (6) weeks prior to the visit, depending on the nationality of the individual and the areas to be visited. Forms can be obtained from the SRNS Procurement Representative.

- B. In addition, the Subcontractor/Supplier shall obtain the approval of the SRNS Procurement Representative, in writing, electronically, prior to the employment of, or participation by, any Foreign National in the performance of work under this Subcontract or any Lower-tier Subcontract at off-site locations. Such approvals will be processed in accordance with the requirements of DOE Order 142.3
- C. In the performance of off-site work, Foreign Nationals only incidentally involved with a SRNS Subcontract, and who have no knowledge that their activities are associated with SRNS Subcontract work, are exempt from the above.
- D. If the statement of work is accompanied by an approved Exception from Foreign National Information Requirements form, this subcontract does not require the subcontractor to provide foreign national information that would otherwise be required by DOE Order 142.3a.

#### **A.36 WORK ON SRS, GOVERNMENT OR OTHER PREMISES**

- A. As to the Work to be done or performed by Subcontractor/Supplier on premises owned or controlled by SRS, the Government, or the premises of other SRS Subcontractors/Suppliers, Subcontractor/Supplier assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any injury including death, or damage to property, sustained in connection with or to have arisen out of the negligent acts or omissions of Subcontractor/Supplier or its Subcontractors/Suppliers, agents, or employees. Subcontractor/Supplier shall indemnify and hold harmless the Government and SRNS from and against any and all claims, demands, actions, causes of action including those brought by an

employee of the Subcontractor/Supplier or a State Industrial Insurance Subcontractor under a Workers/ Workmen's Compensation Act or statute, suits, damages, expenses including attorney fees and liabilities whatsoever resulting from or arising in any manner on account of or by reason of any injury to or death of any person or any damage to or loss of property attributable directly or indirectly to the negligent acts or omissions of Subcontractor/Supplier or its Subcontractors/Suppliers, agents, or employees arising out of, or in any way connected with the performance of this Order, whether or not caused in any way by some act or omission, negligence or otherwise, of SRNS or the Government; provided however, that the Subcontractor's/Supplier's duty to indemnify shall not arise if such injury, death, destruction or loss is caused by the negligence of SRNS or the Government. Nothing in the foregoing shall be construed to require Subcontractor/Supplier to indemnify and save harmless the Government and SRNS from any liability arising out of or resulting from a nuclear incident. To the extent necessary to execute the foregoing indemnification and as permitted by law, Subcontractor/Supplier specifically waives any and all immunity provided by any industrial insurance or Workers/ Workmen's Compensation Act or statute.

- B. When Subcontractor/Supplier shall perform any part of the Work on the premises of SRS or the Government during the performance of this Order, the Subcontractor/Supplier shall have in force and effect, policies of insurance conforming to the terms set forth in Paragraph C of this Article.
- C. (1) The Subcontractor/Supplier shall procure and thereafter maintain at its own expense, the following insurance:
  - (i) Workers' Compensation and Employer's Liability.  
Limits of Liability: Worker's Compensation: Statutory limits in the jurisdiction wherein the Work is to be performed.  
Employer's Liability: A minimum of \$1,000,000.
  - (ii) Comprehensive general liability including Bodily Injury and Property Damage.  
Limits of Liability: A minimum of \$1,000,000 Combined Single Limit.  
**Endorsements: SRNS and the Government to be endorsed as Additional Insured.**  
**Contractual Liability including all coverage endorsed on the basic policy.**

- (iii) Automobile Liability including Bodily Injury and Property Damage including All Owned, Non-Owned and Hired.  
Limits of Liability: \$1,000,000 Combined Single Limit

***Note: All personnel operating motor vehicles at SRS must have a valid driver's license, vehicle registration and proof of insurance (regardless of state of origin). Anyone not having these documents is subject to being denied access to SRS and, if in violation of a law, being cited for the violation.***

- (2) Certificates of insurance evidencing that the requirements of this Article have been met shall be furnished to SRNS before work is commenced with respect to high hazardous performance under this Order, (Ref. OSR 1-183). In addition, a copy of the policy endorsement for Comprehensive General Liability insurance (Ref. paragraph C. (1)(ii) above), naming SRNS and the Government as "Additional Insured", shall be submitted with the certificate of insurance. Provisions shall be made for thirty days advance notice by mail to SRNS of change in or cancellation of such insurance. Certificates shall be issued by insurance carriers satisfactory to SRNS.

With respect to all other services, Statements of Certification of insurance evidencing that the requirements of this Article have been met shall be furnished to SRNS before work is commenced. In addition, a Statement of Endorsement for Comprehensive General Liability insurance (Ref. paragraph C.(1) (ii) above), naming SRNS and the Government as "Additional Insured", shall be submitted with the certificate of insurance. Provisions shall be made for thirty days advance notice by mail to SRNS of change in or cancellation of such insurance. Certificates shall be issued by insurance carriers satisfactory to SRNS.

- (3) In the event the Subcontractor/Supplier fails to furnish such Certifications or Statements of Certification of Insurance, as required in Paragraph 2 herein above, prior to commencement of work or to continue to maintain such insurance during the performance of the Order,



SRNS shall have the right to stop work and/or to withhold any payments or partial payments required to be made under this Order; and shall have the right to continue withholding any or all of said payments so long as the Subcontractor/Supplier has not complied with the requirements of this Article.

- (4) On Orders involving blasting or other hazardous operations, the Subcontractor's/Supplier's insurance shall specifically state that all blasting or such other hazardous operations are fully covered.
- D. Subcontractor/Supplier agrees to comply with and require its Subcontractors/Suppliers to comply with all applicable laws, rules, and regulations with respect to state industrial insurance or Workers/Workmen's Compensation, occupational disease, occupational safety and health, or withholding and payment of social security and federal and state income taxes. Subcontractor/Supplier further agrees to indemnify SRNS and the Government against, and to save and hold harmless SRNS and the Government from, any and all liability and expense with respect to claims against SRNS or the Government which may result from the failure or alleged failure of Subcontractor/Supplier or of any of its Subcontractors/Suppliers to comply therewith.

#### **A.37 BANKRUPTCY**

If the Subcontractor/Supplier enters into any proceeding relating to bankruptcy, it shall give written notice via certified mail to the SRNS Procurement Representative responsible for administering this Agreement/Subcontract within five (5) days of initiation of the proceedings. The notification shall include the date on which the proceeding was filed, the identity and location of the court and a listing of the SRNS Subcontract/Order Numbers for which final payment has not been made.

#### **A.38 ACCESS TO DOE-OWNED OR LEASED FACILITIES**

*(NOTE: Article applies if employees of Subcontractor/Supplier will require physical access to DOE-owned or leased facilities)*

- A. The performance of this Order requires that employees of the Subcontractor/Supplier have physical access to DOE-owned or leased facilities. The Subcontractor/Supplier understands and agrees that DOE has a prescribed process with which the Subcontractor/Supplier and its employees must

comply in order to receive a security badge that allows such physical access. The Subcontractor/Supplier shall propose employees whose background offers the best prospect of obtaining a security badge approval for access. This clause does not control requirements for an employee obtaining a security clearance.

- B. The Subcontractor/Supplier shall assure:
- (1) Compliance with procedures established by DOE and SRNS in providing its employees with any forms directed by DOE or SRNS;
  - (2) Employees properly complete any forms;
  - (3) Employees submit the forms to the person designated by the SRNS Procurement Representative;
  - (4) Employees cooperate with DOE and SRNS officials responsible for granting access to DOE-owned or leased facilities; and
  - (5) Employees provide additional information requested by those DOE/SRNS officials.
- C. The Subcontractor/Supplier understands and agrees that DOE may unilaterally deny a security badge to an employee and that the denial remains effective for that employee unless DOE subsequently determines that access may be granted. Upon notice from DOE or SRNS that an employee's application for a security badge is or will be denied, the Subcontractor/Supplier shall promptly identify and submit the appropriate forms for the substitute employee. The denial of a security badge to individual employees by DOE shall not be cause for extension of the period of performance of this Order or any Subcontractor/Supplier claim against DOE or SRNS.
- D. The Subcontractor/Supplier shall return to the SRNS Procurement Representative, or designee, the badge(s) or other credential(s) provided by DOE pursuant to this clause, granting physical access to DOE-owned or leased facilities by the Subcontractor's/Supplier's employee(s) upon:
- (1) Termination of this Order;
  - (2) Expiration of this Order;
  - (3) Termination of employment on this Order by an individual employee; or
  - (4) Demand by DOE/SRNS for return of the badge.
- E. The Subcontractor/Supplier shall include this clause, including this paragraph E. in any Lower-tier Subcontract, awarded in the performance of this Order, in which an employee(s) of the Subtier Subcontractor/Supplier will require physical access to DOE-owned or leased facilities.



**A.39 WAIVER OF BENEFITS**  
**(STAFF AUGMENTATION SUBCONTRACTS ONLY)**

Prior to performance, the Subcontractor/Supplier shall obtain from each Subcontractor employee and submit to SRNS a signed acknowledgement and waiver of any SRNS salary and benefits programs in a form satisfactory to SRNS, whereby the Subcontractor employee agrees and understands that (s)he is an employee of the Subcontractor/Supplier, and not of Savannah River Nuclear Solutions, LLC (SRNS) or the United States Department of Energy, that the employee will receive all compensation (salary and benefits) from Subcontractor/Supplier/ and will not be eligible for any salary or benefits programs provided by SRNS, including but not limited to base salary, health and welfare plans, pension plans, and 401(k) investment savings programs.

**A.40 SUPPLEMENTAL DEFINITIONS FOR FAR AND DEAR CLAUSES INCORPORATED BY REFERENCE**

- A. "Contract" means this Subcontract or Order (except in instances when it is not applicable or appropriate), and includes changes and modifications to this Subcontract.
- B. "Contractor" means the party to whom this Subcontract or Order is awarded (except in instances when it is not applicable or appropriate).
- C. "Government" means SRNS (except in instances when it is not applicable or appropriate).
- D. "Contracting Officer" means the Procurement Representative of SRNS.
- E. "Subtier Subcontractor/Supplier" means any party entering into an agreement with the Subcontractor/Supplier or any Subtier Subcontractor/Supplier for the furnishing of supplies or services required for performance of this Subcontract.

*This Subcontract or Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, SRNS will make their full text available.*

**\*A.41 NUCLEAR HAZARDS INDEMNITY AGREEMENT (OCT 2005)**

DEAR 952.250-70

**\*A.42 EQUAL OPPORTUNITY (APR 2002)**

FAR 52.222-26

**\*A.43 STOP WORK ORDER (AUG 1989)**

FAR 52.242-15

**\*A.44 CONVICT LABOR (JUN 2003)**

FAR 52.222-3

**\*A.45 NOTICE OF LABOR DISPUTES (FEB 1997)**

FAR 52.222-1

**\*A.46 INTEREST (JUN 1996)**

FAR 52.232-17, with the addition of a paragraph (d) to read as follows: "(d) No interest is payable to the Subcontractor/Supplier for any claim or voucher the Subcontractor/Supplier may submit for payment except as specifically imposed by a Court on any judgment obtained by the Subcontractor/Supplier or as otherwise provided herein."

**\*A.47 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000)**

This Article applies only with respect to work to be performed on-Site.  
DEAR 952.203-70

**\*A.48 SUBCONTRACTS FOR COMMERCIAL ITEMS (FEB 2006)**

FAR 52.244-6

**\*A.49 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (MAR 2005)**

FAR 52.225-13

**\*A.50 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (NOV 2006)**

FAR 52.204-9

*Note: Applies if Subcontractor/Supplier requires routine access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.*

**A.51 COMPLIANCE WITH DIESEL EMISSION REDUCTION ACT (DERA)**

- A. All diesel powered equipment bought on-site for ARRA work is required to burn ultra-low sulfur diesel fuel ( $\leq 15$  ppm). Fuel certification will be available for inspection upon request.
- B. All pre-1996 model year non-road diesel engine equipment brought on-site for ARRA work shall be retrofitted with EPA verified control equipment. Equipment certification will be submitted prior to commencement of work.
- C. SRS is implementing South Carolina State Transport Police (SCSTP) maximum idling regulation SCCL§56-35-10. All "self-propelled

diesel motor vehicles licensed for use on a public roadway to transport passengers or property when the vehicle has a gross vehicle weight rating or gross combination weight rating of ten thousand and one pounds or more” shall be shut down if the idling period will exceed 10 consecutive minutes. Additional guidance on maximum idling time can be obtained at [www.scstp.org](http://www.scstp.org).

#### **A.52 INSPECTION EXCEPTION FOR THORIATED TUNGSTEN ELECTRODES**

SRS has determined that thoriated tungsten electrodes will no longer be used in the manual gas tungsten arc welding (GTAW) process at SRS. This applies to the manual GTAW process only. For automatic GTAW the use of thoriated tungsten is allowed due to the dedicated grinding area and control of the process.

#### **A. 53 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS**

This is a rated Order certified for national defense, emergency preparedness, and energy program use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System Regulation. (15 CFR 700) Should any applicable DPAS Regulations pertaining to acceptance and rejection of rated Orders (see 15 CFR 700.13), preferential scheduling (see 15 CFR 700.14), extension of priority ratings (see 15 CFR 700.15) changes or cancellations of priority ratings and rated Orders (see 15 CFR 700.16) use of rated Orders (see 15 CFR 700.17), and limitations on placing rated Orders (see 15 CFR 700.18) conflict with this Agreement, then the DPAS will control.

15 CFR 700.17 provides an exemption for all Orders less than \$75,000, or one half of the Federal Acquisition Regulation (FAR) Simplified Acquisition Threshold, (see FAR 2.101) whichever amount is larger, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

This rating must be passed on to Subtier Subcontractors/Suppliers in all cases to ensure delivery of the items required. The Subcontract is rated DO-E1 for Construction or DO-E2 for Operations). Reference FAR 52.211-15.

#### **A.54 EXPORT CONTROL**

The Parties agree to adhere to all applicable U.S. export laws and regulations. Each party acknowledges that it is responsible for its own

compliance with all U. S. export control laws and regulations.

#### **A.55 DOE O 442.2 – DIFFERING PROFESSIONAL OPINIONS FOR TECHNICAL ISSUES INVOLVING ENVIRONMENT, SAFETY AND HEALTH**

Subcontractors/Suppliers and any Subtier Subcontractor/ Supplier are responsible for flowing down the requirements of the Contractor Requirements Document (CRD) identified in DOE O 442.2 to the extent necessary to ensure compliance with this requirement. The Subcontractors/ Suppliers and any Subtier must:

- (1) Ensure that all Subcontractor/Supplier and any Subtier Subcontractor/ Supplier employees are notified quarterly that they have the right to report environment, safety and health technical concerns that have not been resolved through routine work processes through the Department of Energy Differing Professional Opinion (DPO) process (the DOE DPO process can be found in Attachment 2 to DOE O 442.2 and at <http://www.hss.doe.gov/nuclearsafety/qa/dpo.html>). The notification must provide points of contact (name, phone number and email addresses of DPO Managers) as listed on the DOE DPO web page, as well as the DOE DPO web page address.
- (2) Protect Subcontractor/Supplier and any Subtier Subcontractor/ Supplier employees from reprisal or retaliation for reporting a DPO.
- (3) Provide Subcontractor/Supplier and any Subtier Subcontractor/ Supplier employees’ reasonable time and resources to use the DPO Process.
- (4) Assist DOE as requested in the resolution of DPOs.
- (5) Report to the DOE when requested on the status of assigned implementation actions resulting from the DPO resolution and on the closure of these implementations actions.

### **SECTION B**

#### **SECTION B ARTICLES APPLY IF THE PRICE OF THIS ORDER EXCEEDS \$2,500 and \$3,000 (RESPECTIVELY).**

*(This Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, SRNS will make their full text available. Reference Article A.40, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference.")*

**\*B.1 BUY AMERICAN ACT—SUPPLIES**  
(JUN 2003) FAR 52.225-1

**\*B.2 EMPLOYMENT ELIGIBILITY  
VERIFICATION**

*NOTE: This Article applies only with respect to the following: ((1) Is for –*

*(i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or (ii) Construction;*(2) Has a value of more than \$3,000; and (3) Includes work performed in the United States.) (Jan 2009) FAR 52.222-54.

**SECTION C**

**SECTION C ARTICLES APPLY IF THE PRICE OF THIS ORDER EXCEEDS \$10,000.**

*(This Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, SRNS will make their full text available. Reference Article A.40, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference.)*

**\*C.1 AFFIRMATIVE ACTION FOR WORKERS  
WITH DISABILITIES (JUN 1998)**  
FAR 52.222-36

**\*C.2 PATENT INDEMNITY (APR 1984)**  
FAR 52.227-3

*(Note: If this Article is applicable, Article A.24 is deleted.)*

**\*C.3 PROHIBITION OF SEGREGATED  
FACILITIES (FEB 1999)**  
FAR 52.222-21

**SECTION D**

**SECTION D ARTICLES APPLY IF THE PRICE OF THIS ORDER EXCEEDS \$25,000.**

**D.1 INSPECTION OF SUPPLIES AND  
SERVICES**

A. Definitions

- (1) "Services" as used in this article includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (2) "Supplies" as used in this article, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

B. Subcontractor/Supplier shall provide and maintain an inspection system acceptable to SRNS covering Services and/or Supplies and shall tender to SRNS for acceptance only Supplies that have been inspected in accordance with the inspection system and have been found by Subcontractor/Supplier to be in conformity with Order requirements. As part of the system, Subcontractor/Supplier shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to SRNS and the Government during Order performance and for as long afterwards as this Order requires. SRNS and the Government may perform reviews and evaluations reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the Work. The right of review, whether exercised or not, does not relieve Subcontractor/Supplier of its obligations under this Order.

C. SRNS and the Government has the right to inspect and test all Supplies and Services called for by this Order, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. SRNS and the Government shall perform inspections and tests in a manner that will not unduly delay the Work. SRNS and the Government assume no contractual obligation to perform any inspection and test for the benefit of Subcontractor/Supplier, unless specifically set forth elsewhere in this Order.

D. If SRNS or the Government performs an inspection or test on the premises of Subcontractor/Supplier, Subcontractor/Supplier shall furnish, and shall require Subcontractors/Suppliers to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in this Order, SRNS shall bear the expense of SRNS and Government inspections or tests made at other than the Subcontractor's/Supplier's premises; provided, that in case of rejection, SRNS and the Government shall not be liable for any reduction in the value of inspection or test samples.

E. (1) When Supplies or Services are not ready at the time specified by Subcontractor/Supplier

- for inspection or test, SRNS may charge to Subcontractor/Supplier the additional cost to SRNS related to the inspection or test.
- (2) SRNS may also charge Subcontractor/Supplier for any additional cost of inspection or test when prior rejection makes re-inspection or retest necessary.
- F. SRNS has the right either to reject or to require correction of nonconforming Supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Order requirements. SRNS may reject nonconforming Supplies with or without disposition instructions.
- G. Subcontractor/Supplier shall remove Supplies rejected or required to be corrected. However, SRNS may require correction in place, promptly after notice, by and at the expense of Subcontractor/Supplier. Subcontractor/Supplier shall not tender for acceptance corrected or rejected Supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- H. If any of the Services do not conform to Order requirements, SRNS may require Subcontractor/Supplier to perform the Services again in conformity with Order requirements, at no increase in Order amount. When the defects in Services cannot be corrected by re-performance, SRNS may
- (1) Require Subcontractor/Supplier to take necessary action to ensure that future performance conforms to Order requirements and
- (2) Reduce the Order price to reflect the reduced value of the Services performed.
- I. If Subcontractor/Supplier fails to remove, replace, or correct rejected Supplies promptly, that are required to be removed or to be replaced or corrected, or to re-perform nonconforming Services promptly in conformance with Order requirements or to take the necessary action to ensure future performance of Services in conformity with Order requirements, SRNS may
- (1) By Order or otherwise, remove, replace, or correct the Supplies and perform the Services and charge the cost to Subcontractor/Supplier;
- (2) Terminate this Order for default; or
- (3) Require delivery and make an equitable price reduction.
- J. (1) If this Order provides for the performance of quality assurance at source, and if requested by SRNS, the Subcontractor/Supplier shall furnish advance notification of the time
- (i) When Subcontractor/Supplier inspection or tests will be performed in accordance with the terms and conditions of this Order and
- (ii) When the Supplies will be ready for SRNS inspection.
- (2) The SRNS request shall specify the period and method of the advance notification and the SRNS representative to whom it shall be furnished. Requests shall not require more than two workdays of advance notification if the SRNS representative is in residence in the Subcontractor's/Supplier's plant, nor more than seven workdays in other instances.
- K. SRNS shall accept or reject Supplies as promptly as practicable after delivery, unless otherwise provided in this Order. SRNS's failure to inspect and accept or reject the Supplies shall not relieve Subcontractor/Supplier from responsibility, nor impose liability on SRNS, for nonconforming Supplies.
- L. Inspections and tests by SRNS and the Government do not relieve Subcontractor/Supplier of responsibility for defects or other failures to meet Order requirements. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in this Order.
- M. If acceptance is not conclusive for any reason, SRNS, in addition to any other rights and remedies provided by law, or under other provisions of this Order, shall have the right to require the Subcontractor/Supplier
- (1) At no increase in Order price, to correct or replace the defective or nonconforming Supplies at the original point of delivery or at Subcontractor's/Supplier's plant, at SRNS's election and in accordance with a reasonable delivery schedule as may be agreed upon between Subcontractor/Supplier and SRNS; provided, that SRNS may require a reduction in Order price if Subcontractor/Supplier fails to meet such delivery schedule, or
- (2) Within a reasonable time after receipt by Subcontractor/Supplier of notice of defects or nonconformance, to repay such portion of this Order as is equitable under the circumstances if SRNS elects not to require correction or replacement. When Supplies are returned to Subcontractor/Supplier, Subcontractor/Supplier shall bear the transportation cost from the original point of delivery to Subcontractor's/Supplier's plant and return to the original point when that point is not the

Subcontractor's/Supplier's plant. If Subcontractor/Supplier fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of ten days (or such longer period as SRNS may authorize electronically) after receipt of notice from SRNS specifying such failure, SRNS shall have the right by contract or other-wise to replace or correct such Supplies and charge to Subcontractor/Supplier the cost occasioned thereby.

*(This Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, SRNS will make their full text available. Reference Article A.40, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)*

**\*D.2 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JAN 2005)**

FAR 52.209-6

**\*D.3 EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)**

FAR 52.222-35

**\*D.4 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)**

FAR 52.222-37

**SECTION E**

**SECTION E ARTICLES APPLY IF THE PRICE OF THIS ORDER EXCEEDS \$100,000.**

**E.1 TERMINATION FOR CONVENIENCE OF SRNS**

*Article A.16 is hereby deleted.*

A. SRNS may terminate performance of the Work, in whole or, from time to time, in part if SRNS determines that a termination is in the SRNS's interest. SRNS shall terminate by delivering to Subcontractor/Supplier a Notice of Termination specifying the extent of termination and the effective date. Upon receipt of the notice, if title to property is vested in Subcontractor/Supplier under this Order, it shall revert to the Government

regardless of any other article of this Order, except for property that Subcontractor/Supplier disposed of by bona fide sale or removed from the site.

B. After receipt of a Notice of Termination, and except as directed by SRNS, Subcontractor/Supplier shall immediately proceed with the following obligations, regardless of delay in determining or adjusting any amounts due under this article:

- (1) Stop Work as specified in the notice.
- (2) Place no further Subcontracts or Orders (referred to as Subcontracts in this article) for materials, services, or facilities, except as necessary to complete the continued portion of this Order.
- (3) Terminate all Subcontracts to the extent they relate to the Work terminated.
- (4) Assign to the Government, as directed by SRNS, all right, title, and interest of Subcontractor/Supplier under the Subcontracts terminated, in which case SRNS shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by SRNS, settle all outstanding liabilities and termination settlement proposals arising from the termination of Subcontracts; the approval or ratification will be final for purposes of this article.
- (6) As directed by SRNS, transfer title to the Government and deliver to SRNS
  - (i) The fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the Work terminated, and
  - (ii) The completed or partially completed plans, drawings, information, and other property that, if this Order had been completed, would be required to be furnished to SRNS.
- (7) Complete performance of the Work not terminated.
- (8) Take any action that may be necessary, or that SRNS may direct, for the protection and preservation of the property related to this Order that is in the possession of Subcontractor/Supplier and in which SRNS has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by SRNS, any property of the types referred to in subparagraph (6) above; provided, however, that Subcontractor/Supplier (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions

- prescribed by, and at prices approved by, SRNS. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by SRNS under this Order, credited to the price or cost of the Work, or paid in any other manner directed by SRNS.
- C. After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, Subcontractor/Supplier may submit to SRNS a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by SRNS. Subcontractor/Supplier may request SRNS to remove those items or enter into an agreement for their storage. Within fifteen days, SRNS will accept title to those items and remove them or enter into a storage agreement. SRNS may verify the list upon removal of the items, or if stored, within forty-five days from submission of the list, and shall correct the list, as necessary, before final settlement.
- D. After termination, Subcontractor/Supplier shall submit a final termination settlement proposal to SRNS in the form and with the certification prescribed by SRNS. Subcontractor/Supplier shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in electronic writing by SRNS upon written electronic request of Subcontractor/Supplier within this one-year period. However, if SRNS determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension. If Subcontractor/Supplier fails to submit the proposal within the time allowed, SRNS may determine, on the basis of information available, the amount, if any, due Subcontractor/Supplier because of the termination and shall pay the amount determined.
- E. Subject to paragraph D above, Subcontractor/Supplier and SRNS may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph E or paragraph F below, exclusive of settlement costs, may not exceed the total Order price as reduced by
- (1) The amount of payments previously made and
  - (2) The Order price of Work not terminated. This Order shall be amended and Subcontractor/Supplier paid the agreed amount. Paragraph F below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- F. If Subcontractor/Supplier and SRNS fail to agree on the whole amount to be paid because of the termination of Work, SRNS shall pay Subcontractor/Supplier the amounts determined by SRNS as follows, but without duplication of any amounts agreed on under paragraph E of this article:
- (1) For Work performed before the effective date of termination, the total (without duplication of any items) of:
    - (i) The cost of the Work;
    - (ii) The cost of settling and paying termination settlement proposals under terminated Subcontracts that are properly chargeable to the terminated portion of this Order, if not included in subdivision (i) above; and
    - (iii) A sum, as profit on subdivision (i) above, determined by SRNS under section 49.202 of the Federal Acquisition Regulation, in effect on the date of this Order, to be fair and reasonable; however, if it appears that Subcontractor/Supplier would have sustained a loss on the entire Order had it been completed, SRNS shall allow no profit under this subdivision (iii) and shall reduce the amount of the settlement to reflect the indicated rate of loss.
  - (2) The reasonable costs of settlement of the work terminated, including:
    - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - (ii) The termination and settlement of Subcontracts (excluding the amounts of such settlements); and
    - (iii) Preservation and protection of property under subparagraph B (8) of this article.
- G. Except for normal spoilage, and except to the extent that SRNS expressly assumed the risk of loss, SRNS shall exclude from the amounts payable to Subcontractor/Supplier under paragraph F above, the fair value, as determined by SRNS, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to SRNS or to a Procurement Representative.
- H. The cost principles and procedures of Part 31 of the Federal Acquisition Regulation as supplemented or modified by Part 931 of the Department of Energy Acquisition Regulation, in effect on the date of this Order, shall govern all costs claimed, agreed to, or determined under this article.



- I. If Subcontractor/Supplier failed to submit the termination settlement proposal within the time provided in paragraph D or K and failed to request a time extension, the decision of SRNS is final and not subject to the Disputes article. If SRNS has made a determination of the amount due under paragraph D, F, or K, SRNS shall pay Subcontractor/Supplier
  - (1) The amount determined by SRNS, if there is no right of appeal or if no timely appeal has been taken, or
  - (2) The amount finally determined on an appeal.
- J. In arriving at the amount due Subcontractor/Supplier under this article, there shall be deducted-
  - (1) All un-liquidated advance or other payments to Subcontractor/Supplier under the terminated portion of this Order;
  - (2) Any claim which SRNS or the Government has against Subcontractor/Supplier under this Order; and
  - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Subcontractor/Supplier or sold under the provisions of this article and not recovered by or credited to SRNS.
- K. If the termination is partial, Subcontractor/Supplier may file a proposal with SRNS for an equitable adjustment of the price(s) of the continued portion of this Order. SRNS shall make any equitable adjustment agreed upon. Any proposal by Subcontractor/Supplier for an equitable adjustment under this article shall be requested within ninety days from the effective date of termination unless extended electronically by SRNS.
- L.
  - (1) SRNS may, under the terms and conditions it prescribes, make partial payments and payments against cost incurred by Subcontractor/Supplier for the terminated portion of this Order, if SRNS believes the total of these payments will not exceed the amount to which Subcontractor/Supplier will be entitled.
  - (2) If the total payments exceed the amount finally determined to be due, Subcontractor/Supplier shall repay the excess to SRNS upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by Subcontractor/Supplier to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in

Subcontractor's/Supplier's termination settlement proposal because of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date determined by SRNS because of the circumstances.

- M. Unless otherwise provided in this Order or by statute, Subcontractor/Supplier shall maintain all records and documents relating to the terminated portion of this Order for three years after final settlement. This includes all books and other evidence bearing on Subcontractor's/Supplier's costs and expenses under this Order. Subcontractor/Supplier shall make these records and documents available to the Government, at Subcontractor's/Supplier's office, at all reasonable times, without any direct charge. If approved by SRNS, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

## **E.2 AUDIT AND RECORDS-NEGOTIATION**

### **A. Cost or Pricing Data**

If, pursuant to law, the Subcontractor/Supplier has been required to submit cost or pricing data in connection with this Order or any modification to this Order, SRNS, the Government or representatives of the Government who are employees of the Government shall have the right to examine and audit all of the Subcontractor's/Supplier's books, records, documents, and other data regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, application software, database management software, utilities, etc.) including computations and projections related to proposing, negotiating, pricing, or performing the Order or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projects used.

### **B. Reports**

If the Subcontractor/Supplier is required to furnish cost, funding, or performance reports, SRNS, the government or representatives of the Government who are employees of the Government shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating

- (1) The effectiveness of the Subcontractor's/Supplier's policies and procedures to produce data compatible with the objectives of these reports and

- (2) The data reported.
- C. Availability  
The Subcontractor/Supplier shall make available at its office at all reasonable times the materials described in paragraphs A and B above, for examination, audit, or reproduction, until three (3) years after final payment under this Order or for any longer period required by statute or by other clauses of this contract. In addition -
- (1) If this Order is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and
- (2) Records relating to appeals under the Disputes article or to litigation or the settlement of the Government and SRNS claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are disposed of.
- D. Inspections  
DOE shall have the right to inspect the work and activities of the Subcontractor/Supplier under this Order at such time and in such manner as it shall deem appropriate.
- E. Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, the Subcontractor/Supplier may transfer computer data in machine-readable form from one reliable computer medium to another. The Subcontractor's/Supplier's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The Subcontractor's/Supplier's choice of form or type of materials described in paragraphs (A), (B), and (C) of this article affects neither the Subcontractor's/Supplier's obligations nor SRNS or the Government's rights under this clause.
- F. Comptroller General  
(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this Subcontract or a Lower-tier Subcontract hereunder.
- (2) This paragraph may not be construed to require the Subcontractor or a Subtier Subcontractor to create or maintain any record that the Subcontractor or Subtier Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- G. The Subcontractor/Supplier shall insert a clause containing all the terms of this article, including this paragraph (G), in all Subcontracts over

\$100,000 under this Order, altering the clause only as necessary to identify properly the contracting parties.

*(This Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, SRNS will make their full text available. Reference Article A.40, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)*

**\*E.3 AUTHORIZATION AND CONSENT (JUL 1995)**

FAR 52.227-1

**\*E.4 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)**

DEAR 970.5227-5

**\*E.5 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2005)**

FAR 52.203-12

**\*E.6 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2004)**

FAR 52.219-8

**\*E.7 INTEGRITY OF UNIT PRICES (OCT 1997)**

FAR 52.215-14

**\*E.8 ANTI-KICKBACK PROCEDURES (JUL 1995)**

FAR 52.203-7

**\*E.9 RESTRICTIONS ON CONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**

FAR 52.203-6

**\*E.10 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION – (JUL 2005)**

FAR 52.222-4

**\*E.11 PREFERENCE FOR PRIVATELY-OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)**

FAR 52.247-64

**\*E.12 TOXIC CHEMICAL RELEASE REPORTING (AUG 2003)**

FAR 52.223-1



**\*E.13 NOTIFICATION OF EMPLOYEE RIGHTS  
CONCERNING PAYMENT OF UNION  
DUES OR FEES (DEC 2004)**

FAR 52.222-39

**SECTION F**

**SECTION F ARTICLES APPLY IF THE PRICE  
OF THIS ORDER EXCEEDS \$500,000.**

*(This Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, SRNS will make their full text available. Reference Article A.40, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)*

**\*F.1 DISPLACED EMPLOYEE HIRING  
PREFERENCE (JUN 1997)**

DEAR 952.226.74

**\*F.2 WORKFORCE RESTRUCTURING  
UNDER SECTION 3161 OF THE  
NATIONAL DEFENSE AUTHORIZATION  
ACT FOR FISCAL YEAR 1993 (DEC 2000)**

DEAR 970.5226.2

**\*F.3 SMALL BUSINESS SUBCONTRACTING  
PLAN (JUL 2005)**

FAR 52.219-9

**SECTION G**

**SECTION G ARTICLES APPLY ONLY IF  
SPECIFIED IN THE ORDER, REGARDLESS OF  
ORDER PRICE.**

**G.1 INTEGRATION OF ENVIRONMENT,  
SAFETY AND HEALTH INTO WORK  
PLANNING AND EXECUTION**

- A. For the purpose of this Article,
- (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
  - (2) Employees include Subcontractor/Supplier and Subtier Subcontractor/Supplier employees.
- B. In performing work under this Subcontract, the Subcontractor/Supplier and any Subtier Subcontractors/Suppliers, shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor/Supplier shall exercise a degree of care commensurate with the work and the

associated hazards. The Subcontractor/Supplier shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral, but visible part of the Subcontractor's/Supplier's work planning and execution processes. The Subcontractor/Supplier shall, in the performance of work, ensure that:

- (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and Subtier Subcontractor/Supplier employees managing or supervising employees performing work.
  - (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
  - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
  - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
  - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
  - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
  - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by SRNS and the Subcontractor/Supplier. These agreed-upon conditions and requirements of the Subcontract are binding upon the Subcontractor/Supplier. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work.
- C. The Subcontractor/Supplier and any Subtier Subcontractors/Suppliers shall manage and perform work in accordance with Article G.2 or a documented Worker Protection Plan (WPP) that fulfills all conditions in paragraph B. of this Article to the degree specified in Article G.3 or

G.4., as indicated applicable to this Subcontract. Documentation in the Subcontract shall describe how the Subcontractor/Supplier will:

- (1) Define the Work to be performed;
- (2) Identify and analyze hazards associated with the work;
- (3) Develop and implement hazard controls;
- (4) Perform work within controls; and
- (5) Provide feedback on adequacy of controls and continue to improve safety management.

D. The Subcontract shall describe how the Subcontractor/Supplier will establish, document, and implement safety performance objectives, performance measures, and commitments in response to Subcontract requirements and funding limits while maintaining the integrity of the WPP. The Subcontract shall also describe how the Subcontractor/Supplier will measure WPP effectiveness.

E. The Subcontractor/Supplier shall submit to the Procurement Representative documentation of its WPP for review and acceptance. The Procurement Representative will establish dates for submittal, discussions, and revisions to the WPP. The Procurement Representative will provide guidance on preparation, content, review, and acceptance of the WPP. On an annual basis, the Subcontractor/Supplier shall review and update, for SRNS acceptance, its safety performance objectives, performance measures, and commitments consistent with, and in response to, Subcontract requirements, funding limits and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire WPP. Accordingly, the Subcontract shall be integrated with the Subcontractor's/Supplier's business processes, as applicable to the Scope of Work contained in this Subcontract, for work planning, budgeting, authorization, execution, and change control.

F. The Subcontractor/Supplier and any Subtier Subcontractors/Suppliers, shall comply with, and assist SRNS in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the Article of this Subcontract on Laws, Regulations, and DOE Directives. The Subcontractor/Supplier shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this Subcontract.

G. The Subcontractor/Supplier shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements including those specified in the Subcontract. If the

Subcontractor/Supplier fails to provide resolution or, if at any time, the Subcontractor's/Supplier's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Procurement Representative may issue an Order stopping work in whole or in part. Any stop work Order issued by the Procurement Representative under this Article (or issued by the Subcontractor/Supplier to a Subtier Subcontractor/Supplier shall be without prejudice to any other legal or contractual rights of SRNS. In the event that the Procurement Representative issues a stop work Order, an Order authorizing the resumption of the work may be issued at the discretion of the Procurement Representative. The Subcontractor/Supplier shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

H. SRNS shall hold the Subcontractor/Supplier responsible for compliance with the ES&H requirements applicable to this Subcontract, including performance of work by any Subtier Subcontractors/Suppliers. In utilizing the Focused Observation Checklists, Subcontractors/Suppliers are required to forward any self-identified safety deficiencies to the STR/End User. The STR/End User will forward the deficiencies to SRNS Contractor Assurance for screening.

## **G2. ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE - ALTERNATIVE I**

*(Compliance by the Subcontractor/Supplier with the requirements of this Article G.2 shall satisfy any/all requirements of Article G.1, "Integration of Environment, Safety and Health into Work Planning and Execution", applicable to the scope of work contained in this Subcontract.)*

A. The Subcontractor/Supplier and any Subtier Subcontractors/Suppliers shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety, and health of employees and members of the public. All work shall be performed to include Lower-tier subcontracted work in compliance with all applicable SRNS/DOE environmental, safety, and health requirements, including DOE Regulation 10 CFR 851, "Worker Safety and Health Program", and Orders, and procedures including related reporting requirements. Such procedures provide authority to SRNS employees to call a "time out/stop work" when unsafe conditions are observed and/or employee actions are likely to cause injury to themselves, other personnel, or cause damage to SRS property. The

Subcontractor/Supplier shall ensure that its employees, including Subtier Subcontractor/Supplier employees are aware of this authority, and also have similar “time out/stop work” authority when performing work under this Subcontract. The SRNS Procurement Representative shall electronically notify the Subcontractor/Supplier of any noncompliance with the provisions of this Article and the corrective action to be taken. After receipt of such notice, the Subcontractor/Supplier shall immediately take corrective action. In the event that the Subcontractor/Supplier fails to take corrective action and comply with said SRNS/DOE regulations, requirements and procedures the SRNS Procurement Representative may, without prejudice to any other legal or contractual rights of SRNS, issue an Order stopping work in whole or in part. An Order authorizing the resumption of work may be issued at the discretion of the Procurement Representative. The Subcontractor/Supplier shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage Ordered in accordance with this Article.

- B. Prior to the start of work under this Subcontract, the Subcontractor/Supplier shall provide to the SRNS Procurement Representative, a letter acknowledging a Corporate Safety and Health Policy and confirmation of compliance with SRNS procedures. In addition, for any tasks identified in the Statement of Work as outside the scope of SRNS procedures, the Subcontractor/Supplier shall provide to the SRNS Procurement Representative for SRNS’ review and acceptance any appropriate documentation, procedures or manuals containing task hazard reviews and safeguards to be implemented. Whenever a significant change or addition is made to such documentation, procedures or manuals, the Subcontractor/Supplier shall re-submit the revised document to SRNS for review and acceptance. Examples of significant changes include any requirement deletions, additional scope added, total re-write or major revision. Additionally, the Subcontractor/Supplier must submit annually to SRNS either an update to the documentation, procedures or manuals for acceptance or a letter stating that no changes are necessary in the current accepted documents.

C. Equipment Safety.

The Subcontractor/Supplier shall ensure that major equipment used in the performance of work under this Subcontract is inspected, operated and maintained by qualified competent personnel. As confirmation, the Subcontractor/Supplier shall

complete Form PF-44, Major Equipment Declaration, and (a copy available on the SRNS Internet Home Page) provide one (1) copy to the Subcontract Technical Representative (STR)/End User, prior to placing any such equipment in service on the Savannah River Site (SRS). Additionally, prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy duty equipment on the Savannah River Site (SRS), the Subcontractor/Supplier shall complete the “Self-propelled Equipment Loading, Unloading & Transport Safety Review Checklist”, copy available on the SRNS Home Page at ([http://www.srs.gov/general/busiops/PMMD/SRNS\\_general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm)), and provide a copy to the STR/End User.

D. Assigned Competent Person.

The Subcontractor/Supplier shall designate in writing an Assigned Competent Person (ACP), and alternates, who will be responsible for SRS perimeter barricade escort and safety orientation for non-badged material/equipment delivery personnel and other non-badged Subcontractor/Supplier personnel seeking temporary badges in support of the Subcontractor’s work scope. The ACP shall be a responsible employee, cognizant of the Subcontract scope and all applicable environmental, safety and health requirements, including any focused observation safety checklists. The ACP shall furnish an advance copy of applicable focused observation safety checklists to any non-badged temporary personnel anticipating entry onto SRS, and shall meet entering personnel at the SRNS Badging Office, Building 703-46A when they report for temporary badging. The ACP and entering personnel shall review the scope of work to be performed and upon arrival at the work site review, complete and date any applicable focused observation safety checklist(s). For material/equipment deliveries, the ACP shall review any applicable focused observation safety checklists with delivery personnel, including specific safety measures required for loading/unloading in accordance with OSHA.

E. Safety and Health Representative.

The Subcontractor/Supplier shall designate a safety and health professional or representative, as specified in the Subcontract. The designation must include the person’s qualifications and duties. A designated Safety Representative shall have a minimum of thirty (30) hours formal Safety and Health training in OSHA standards or pre-approved equivalent, having other safety related

training certificates and/or job experience in General Industry/Construction safety with an understanding of the requirements in 29 CFR 1910/1926.

F. Site Reporting Requirements

The Subcontractor/Supplier shall immediately notify the STR/End User or SRNS Procurement Representative of any event/condition that may require reporting to DOE. Further, the Subcontractor/Supplier shall cooperate with any SRNS or DOE critique, analysis, or investigation and complete necessary reports for such events/conditions. Events/conditions that require reporting to DOE are defined in DOE Manual 231.1-2 (DOE M 231.1-2) and can include (but are not limited to):

- (1) Operational emergencies,
- (2) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,
- (3) Any on-the-job injury where an employee is taken offsite for something other than observation. The notification requirement applies to any person who goes offsite for prompt medical treatment of any type. The mode of transportation (ambulance, personal vehicle, etc.) is not pertinent – any offsite transfers must be reported immediately,
- (4) Any violation of Lockout/Tag out controls where there are no credible barriers left between the worker, and the energy source regardless of whether or not there was an injury,
- (5) Fires/explosions,
- (6) Hazardous energy control failures,
- (7) Operations shutdown directed by management for safety response,
- (8) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.,
- (9) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations,
- (10) Loss, damage, theft, or destruction to government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),
- (11) Spread of radioactive contamination or loss of control of radioactive materials,
- (12) Personnel radioactive contaminations or exposures, and
- (13) Violations of procedures.

Immediate notification is required of such events to ensure SRNS meets its commitment for 30 minute notification to appropriate DOE authorities. The Subcontractor/Supplier shall

preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Subcontractor/Supplier and their employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the environment, safety and health requirements of this Subcontract.

**G.3 ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE – ALTERNATIVE II**

*(Compliance by the Subcontractor/Supplier with the requirements of this Article G.3 shall satisfy any/all requirements of Article G.1, "Integration of Environment, Safety and Health into Work Planning and Execution", applicable to the scope of work contained in this Subcontract.)*

A. The Subcontractor/Supplier and any Subtier Subcontractors/Suppliers shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety and health of employees and members of the public, and shall comply with OSHA and all other applicable federal, state and local regulatory requirements, including new DOE Regulation 10 CFR 851, "Worker Safety and Health Program" which will apply to any work performed on the Savannah River Site (SRS) effective February 9, 2007. The Subcontractor/Supplier and any Subtier Subcontractor/Supplier shall comply with site-specific ES&H requirements when specified in the Subcontract. The SRNS Procurement Representative shall notify the Subcontractor/Supplier electronically in writing of any noncompliance with the provisions of this Article. After receipt of such notice, the Subcontractor/Supplier shall immediately take corrective action. In the event that the Subcontractor/Supplier fails to take corrective action and comply with said regulations and requirements, the SRNS Procurement Representative may, without prejudice to any other legal or contractual rights of SRNS, issue an Order stopping work in whole or in part. An Order authorizing the resumption of work may be issued at the discretion of the Procurement Representative. The Subcontractor/Supplier shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

B. Corporate Worker Protection Plan (WPP)

The Subcontractor/Supplier shall possess and maintain a corporate Worker Protection Plan (WPP) which implements the OSHA requirements applicable to the normal course of the



Subcontractor's/Supplier's business. Prior to the start of work under this Subcontract, the Subcontractor/Supplier shall provide to the SRNS Procurement Representative, a copy of the WPP and sample Task Specific Plans (TSP) (based on a minimum of three tasks in the scope of work), for review and acceptance by the appropriate SRNS organization(s). ***NOTE: Subcontractor/Supplier is responsible for conducting hazard analysis and documenting additional TSPs.*** Work under this Subcontract shall not commence until the WPP and TSPs have been accepted by SRNS. The Subcontractor/Supplier shall provide a copy of the accepted WPP and TSP to any Subtier Subcontractors/Suppliers and shall ensure Subcontractor/Supplier employee's performing work at the site have access to the WPP document accepted by SRNS, and other standards, controls and procedures including DOE worker protection publications applicable to the workplace. The Subcontractor's/Supplier's employees and the employees of any Subtier Subcontractors/Suppliers shall comply with the WPP and TSPs in the performance of the work under this Subcontract. The WPP shall meet the following minimum requirements:

- (1) Shall include management policies that provide for clear goals, responsibilities, authority, and accountability for meeting loss control objectives;
- (2) Shall include the implementation of applicable local, state, federal, environment, safety and health requirements that are relevant to the scope of work, including applicable elements in 10 CFR 851, "Worker Safety and Health Program";
- (3) Shall provide employee guidance on internal engineering controls, precautions, and requirements on personal protective equipment (PPE) to minimize, control and/or prevent employee exposure to include equipment/property loss;
- (4) Shall include management policies for incorporating and implementing the use of American Conference of Governmental Industrial Hygienist (ACGIH) threshold limit values (TLVs). The ACGIH guidelines shall be used when the TLV(s) exposure limits are more restrictive than OSHA permissible exposure limits (PELs).
- (5) Shall include Task Specific Plans that include hazard identification and control measures that provide for safe work practices and employee training (i.e., 1) Define Scope of Work, 2) Identify and Analyze Hazards, 3) Develop and Implement Controls, 4) Perform

Work within Controls, 5) Provide Feedback, and Continuous Improvement.);

- (6) Shall include Focused Observation Checklists, as applicable. The Subcontractor/Supplier shall (i) thoroughly assess the work scope, (ii) identify the associated hazards, and (iii) apply elements of corresponding Checklists within the Worker Protection Plan (WPP) or utilize applicable Checklists as attachments to the WPP. Subcontract scope performed by the Subcontractor/Supplier and its Subtier Subcontractors/Suppliers will typically be covered by the WPP and appropriate Checklists. Such Checklists are available on the Savannah River (SRS) Site Internet Home Page

([http://www.srs.gov/general/busiops/PMMD/SRNS\\_general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm)) for review and down loading.

- (7) Shall include a process that provides authority to Subcontractor/Supplier and Subtier Subcontractor/Supplier employees to call for a "time out/stop work" when unsafe conditions are observed and/or employee actions are likely to cause injury to themselves, other personnel, or cause damage to SRS property.

The Subcontractor/Supplier shall provide mechanisms to involve workers in the development of WPP goals, objectives, and performance measures and in the identification and control of workplace hazards. Whenever a significant change or addition is made to the WPP, it shall be re-submitted to SRNS for review and acceptance. Examples of significant changes include any requirement deletions, additional scope added, total re-write or major revision. Additionally, the Subcontractor/Supplier must submit annually to SRNS either an updated WPP for acceptance or a letter stating that no changes are necessary in the current accepted WPP.

#### C. Equipment Safety.

The Subcontractor/Supplier shall ensure that major equipment used in the performance of work under this Subcontract is inspected, operated and maintained by qualified competent personnel. As confirmation, the Subcontractor/Supplier shall complete Form PF-44, Major Equipment Declaration (copy available on the SRNS Internet Home Page) and, provide one (1) copy to the Subcontract Technical Representative (STR)/End User, prior to placing any such equipment in service on the Savannah River Site (SRS). Additionally, prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy duty equipment on the Savannah River Site (SRS), the

Subcontractor/Supplier shall complete the “Self-propelled Equipment Loading, Unloading & Transport Safety Review Checklist”, copy available on the SRNS Home Page at ([http://www.srs.gov/general/busiops/PMMD/SRNS general provisions.htm](http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm)), and provide a copy to the STR/End User.

D. Assigned Competent Person.

The Subcontractor/Supplier shall designate in writing an Assigned Competent Person (ACP), and alternates, who will be responsible for SRS perimeter barricade escort and safety orientation for non-badged material/equipment delivery personnel and other non-badged Subcontractor personnel seeking temporary badges in support of the Subcontractor’s/Supplier’s work scope. The ACP shall be a responsible employee, cognizant of the Subcontract scope and all applicable environmental, safety and health requirements, including any focused observation safety checklists. The ACP shall furnish an advance copy of applicable focused observation safety checklists to any non-badged temporary personnel anticipating entry onto SRS, and shall meet entering personnel at the SRNS Badging Office, Building 703-46A when they report for temporary badging. The ACP and entering personnel shall review the scope of work to be performed and upon arrival at the work site review, complete and date any applicable focused observation safety checklist(s). For material/equipment deliveries, the ACP shall review any applicable focused observation safety checklists with delivery personnel, including specific safety measures required for loading/unloading in accordance with OSHA and the WPP.

E. Safety and Health Representative.

The Subcontractor/Supplier shall designate a safety and health professional or representative, as specified in the Subcontract. The designation must include the person’s qualifications and duties and be documented in the Subcontractor’s/Supplier’s Worker Protection Plan. A designated Safety Representative shall have a minimum of thirty (30) hours formal Safety and Health training in OSHA standards or pre-approved equivalent, having other safety related training certificates and/or job experience in General Industry/Construction safety with an understanding of 29 CFR 1910/1926 requirements.

F. Material Safety Data Sheets.

The Subcontractor/Supplier shall provide the STR/End User copies of Material Safety Data Sheets for all chemicals brought to SRS prior to the initial use of such chemicals. In addition, the Subcontractor/Supplier shall provide the STR/End

User with a current inventory on a monthly basis for chemicals stored on-site for thirty (30) or more days per EPCRA/CERCLA. All chemicals stored on-site shall follow NFPA storage guidelines.

G. Environmental Compliance

The Subcontractor/Supplier and any Subtier Subcontractors/Suppliers shall comply with all applicable environmental protection laws, Executive Orders, ordinances, regulations, directives, and codes. Upon request, the Subcontractor/Supplier shall submit an Environmental Compliance Plan (ECP) outlining the methods proposed to address the environmental requirements specified in the scope of work. The ECP shall specify the person responsible for ensuring the requirements are met.

H. Site Reporting Requirements

The Subcontractor/Supplier shall immediately notify the STR/End User or SRNS Procurement Representative of any event/condition that may require reporting to the DOE. Further, the Subcontractor/Supplier shall cooperate with any SRNS or DOE critique, analysis, or investigation and complete necessary reports for such events/conditions. Events/conditions that require reporting to DOE are defined in DOE Manual 231.1-2 (DOE M 231.1-1-2) and can include (but are not limited to):

- (1) Operational emergencies,
- (2) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,
- (3) Any on-the-job injury where an employee is taken offsite for something other than observation. The notification requirement applies to any person who goes offsite for prompt medical treatment of any type. The mode of transportation (ambulance, personal vehicle, etc.) is not pertinent – any offsite transfers must be reported immediately,
- (4) Any violation of Lockout/Tag out controls where there are no credible barriers left between the worker, and the energy source regardless of whether or not there was an injury
- (5) Fires/explosions,
- (6) Hazardous energy control failures,
- (7) Operations shutdown directed by management for safety reasons,
- (8) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.
- (9) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations,
- (10) Loss damage, theft, or destruction to

- government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),
- (11) Spread of radioactive contamination or loss of control of radioactive materials,
  - (12) Personnel radioactive contaminations or exposures, and
  - (13) Violations of procedures.

Immediate notification is required of such events to ensure SRNS meets its commitment for 30 minute notification to appropriate DOE authorities. The Subcontractor/Supplier shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Subcontractor/Supplier and their employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the environment, safety and health requirements of this Subcontract.

#### **G.4 ENVIRONMENT, SAFETY, AND HEALTH COMPLIANCE – ALTERNATIVE III**

*(Compliance by the Subcontractor/Supplier with the requirements of this Article G.4 shall satisfy any/all requirements of Article G.1, "Integration of Environment, Safety and Health into Work Planning and Execution", applicable to the scope of work contained in this Subcontract.)*

- A. The Subcontractor/Supplier and any Subtier Subcontractors/Suppliers shall take all reasonable precautions in the performance of the work under this Subcontract to protect the environment, safety and health of employees and members of the public, and shall comply with OSHA and all other applicable federal, state and local regulatory requirements, including new DOE Regulation 10 CFR 851, "Worker Safety and Health Program" which will apply to any work performed on the Savannah River Site (SRS) effective February 9, 2007. The Subcontractor/Supplier and any Subtier Subcontractor shall comply with site-specific ES&H requirements when specified in the Subcontract. The SRNS Procurement Representative shall notify the Subcontractor/Supplier in writing of any noncompliance with the provisions of this Article. After receipt of such notice, the Subcontractor/Supplier shall immediately take corrective action. In the event that the Subcontractor/Supplier fails to take corrective action and comply with said regulations and requirements, the SRNS Procurement Representative may, without prejudice to any other legal or contractual rights of SRNS, issue an Order stopping work in whole or in part. An Order

authorizing the resumption of work may be issued at the discretion of the SRNS Procurement Representative. The Subcontractor/Supplier shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this Article.

#### **B. Corporate Worker Protection Plan (WPP)**

The Subcontractor/Supplier shall possess and maintain a corporate Worker Protection Plan (WPP) which implements the OSHA requirements applicable to the normal course of the Subcontractor's/Supplier's business. Prior to the start of work under this Subcontract, the Subcontractor/Supplier shall provide to the SRNS Procurement Representative a copy of the WPP for review and acceptance by the appropriate SRNS organizations. The Subcontractor's/Supplier's employees and the employees of any Subtier Subcontractors/Suppliers shall comply with the WPP in the performance of the work under this Subcontract. Work under the Subcontract shall not commence until the WPP has been received and accepted by SRNS. The Subcontractor/Supplier shall provide a copy of the WPP to any Subtier Subcontractors/Suppliers and shall ensure Subcontractor/Supplier employee's performing work at the site have access to the WPP document accepted by SRNS, and other standards, controls and procedures including DOE worker protection publications applicable to the workplace. The WPP shall meet the following minimum requirements:

- (1) Shall include management policies that provide for clear goals, responsibilities, authority, and accountability for meeting loss control objectives;
- (2) Shall include the implementation of applicable local, state, federal, environment, safety and health requirements that are relevant to the scope of work, including applicable elements in 10 CFR 851, "Worker Safety and Health Program";
- (3) Shall provide employee guidance on task hazards, engineering controls, precautions, and requirements on personal protective equipment (PPE) to minimize, control and/or prevent employee exposure to include equipment/property loss;
- (4) Shall include management policies for incorporating and implementing the use of American Conference of Governmental Industrial Hygienist (ACGIH) threshold limit values (TLVs). The ACGIH guidelines shall be used when the TLV(s) exposure limits are more restrictive than OSHA permissible

- exposure limits (PELs).
- (5) Shall include Focused Observation Checklists, as applicable. The Subcontractor/Supplier shall (i) thoroughly assess the work scope, (ii) identify the associated hazards, and (iii) apply elements of corresponding Checklists within the Worker Protection Plan (WPP) or utilize applicable Checklists as attachments to the WPP. Subcontract scope performed by the Subcontractor/Supplier and its Subtier Subcontractors/Suppliers will typically be covered by the WPP and appropriate Checklists. Such Checklists are available on the Savannah River Site (SRS) Internet Home Page ([http://www.srs.gov/general/busiops/PMMD/SRNS\\_general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm)) for review and down loading.
  - (6) Shall include a process that provides authority to Subcontractor/Supplier and Subtier Subcontractor/Supplier employees to call for a “time out/ stop work” when unsafe conditions are observed and/or employee actions are likely to cause injury to themselves, other personnel, or cause damage to SRS property. The Subcontractor/Supplier shall provide mechanisms to involve workers in the development of WPP goals, objectives, and performance measures and in the identification and control of workplace hazards. Whenever a significant change or addition is made to the WPP, it shall be re-submitted to SRNS for review and acceptance. Examples of significant changes include any requirement deletions, additional scope added, total re-write or major revision. Additionally, the Subcontractor/Supplier must submit annually to SRNS either an updated WPP for acceptance or a letter stating that no changes are necessary in the current accepted WPP.
- C. Equipment Safety.
- The Subcontractor/Supplier shall ensure that major equipment used in the performance of work under this Subcontract is inspected, operated and maintained by qualified competent personnel. As confirmation, the Subcontractor/Supplier shall complete Form PF-44, Major Equipment Declaration, (copy available on the SRNS Internet Home Page) and, provide one (1) copy to the Subcontract Technical Representative (STR)End User, prior to placing any such equipment in service on the Savannah River Site (SRS). Additionally, prior to performing any activity involving the loading, unloading, and transporting of self-propelled medium or heavy duty equipment on the Savannah River Site (SRS), the Subcontractor/Supplier shall complete the “Self-propelled Equipment Loading, Unloading & Transport Safety Review Checklist”, copy available on the SRNS Home Page at ([http://www.srs.gov/general/busiops/PMMD/SRNS\\_general\\_provisions.htm](http://www.srs.gov/general/busiops/PMMD/SRNS_general_provisions.htm)), and provide a copy to the STR/End User.
- D. Assigned Competent Person.
- The Subcontractor/Supplier shall designate in writing an Assigned Competent Person (ACP), and alternates, who will be responsible for SRS perimeter barricade escort and safety orientation for non-badged material/equipment delivery personnel and other non-badged Subcontractor/Supplier personnel seeking temporary badges in support of the Subcontractor’s/Supplier’s work scope. The ACP shall be a responsible employee, cognizant of the Subcontract scope and all applicable environmental, safety and health requirements, including any focused observation safety checklists. The ACP shall furnish an advance copy of applicable focused observation safety checklists to any non-badged temporary personnel anticipating entry onto SRS, and shall meet entering personnel at the SRNS Badging Office, Building 703-46A when they report for temporary badging. The ACP and entering personnel shall review the scope of work to be performed and upon arrival at the work site review, complete and date any applicable focused observation safety checklist(s). For material/equipment deliveries, the ACP shall review any applicable focused observation safety checklists with delivery personnel, including specific safety measures required for loading/unloading in accordance with OSHA and the WPP.
- E. Safety and Health Representative.
- The Subcontractor/Supplier shall designate a safety and health professional or representative, as specified in the Subcontract. The designation must include the person’s qualifications and duties and be documented in the Subcontractor’s/Supplier’s Worker Protection Plan. A designated Safety Representative shall have a minimum of thirty (30) hours formal Safety and Health training in OSHA standards or pre-approved equivalent, having other safety related training certificates and/or job experience in General Industry/Construction safety with an understanding of 29 CFR 1910/1926 requirements.
- F. Material Safety Data Sheets.
- The Subcontractor/Supplier shall provide the STR/End User copies of Material Safety Data Sheets for all chemicals brought to SRS prior to the initial use of such chemicals. In addition, the Subcontractor/Supplier shall provide the STR/End



User with a current inventory on a monthly basis for chemicals stored on-site for thirty (30) or more days per EPCRA/CERCLA. All chemicals stored on-site shall follow NFPA storage guidelines.

G. Environmental Compliance

The Subcontractor/Supplier and any Subtier Subcontractors/Suppliers shall comply with all applicable environmental protection laws, Executive Orders, ordinances, regulations, directives, and codes. Upon request, the Subcontractor/Supplier shall submit an Environmental Compliance Plan (ECP) outlining the methods proposed to address the environmental requirements specified in the scope of work. The ECP shall specify the person responsible for ensuring the requirements are met.

H. Site Reporting Requirements

The Subcontractor/Supplier shall immediately notify the STR/End User or SRNS Procurement Representative of any event/condition that may require reporting to the DOE. Further, the Subcontractor/Supplier shall cooperate with any SRNS or DOE critique, analysis, or investigation and complete necessary reports for such events/conditions. Events/conditions that require reporting to DOE are defined in DOE Manual 231.1-2 (DOE M 231.1-1-2) and can include (but are not limited to):

- (1) Operational emergencies,
- (2) Occupational injury or illness (including exposures to hazardous substances in excess of allowable limits) and near misses,
- (3) Any on-the-job injury where an employee is taken offsite for something other than observation. The notification requirement applies to any person who goes offsite for prompt medical treatment of any type. The mode of transportation (ambulance, personal vehicle, etc.) is not pertinent – any offsite transfers must be reported immediately,
- (4) Any violation of Lockout/Tag out controls where there are no credible barriers left between the worker, and the energy source regardless of whether or not there was an injury
- (5) Fires/explosions,
- (6) Hazardous energy control failures,
- (7) Operations shutdown directed by management for safety reasons,
- (8) Environmental release of radioactive materials, hazardous substances, regulated pollutants, oil spills, etc.
- (9) Violation of Federal Motor Carrier Safety Regulations or Hazardous Material Regulations, and
- (10) Loss damage, theft, or destruction to

government property (including damage to ecological resources like wetlands, critical habitats, historical/archeological sites, etc.),

- (11) Spread of radioactive contamination or loss of control of radioactive materials,

- (12) Personnel radioactive contaminations or exposures, and

- (13) Violations of procedures.

Immediate notification is required of such events to ensure SRNS meets its commitment for 30 minute notification to appropriate DOE authorities. The Subcontractor/Supplier shall preserve conditions surrounding or associated with the event for continued investigation unless such actions interfere with establishing a safe condition. The Subcontractor/Supplier and their employees shall not conceal nor destroy any information concerning noncompliance or potential noncompliance with the environment, safety and health requirements of this Subcontract.

## **G.5 GENERAL CONDITIONS OF EQUIPMENT RENTAL**

A. Rental Payments

Upon the submission of proper invoices or vouchers, Savannah River Nuclear Solutions, LLC (SRNS) shall pay, as full compensation for use of the Equipment, rent at rates set forth in the Order to which these General Conditions are attached. Payments will be made at the end of each month or at the end of the rental, whichever occurs first, for rental accrued during the previous rental period.

B. Rental Rates

- (1) The actual length of the rental period will establish the Base Rental rate (for example, if the Lessor's proposal included a daily, weekly, and monthly rate, and the actual rental period was three days - the daily rate would apply; if the actual rental period was ten days - the weekly rate would apply; and if the actual rental period was 40 days - the monthly rate would apply). The Base Rental Period shall be as in column 1 below. For portions of a rental period beyond one or more full Base Periods, rental shall be calculated by the fractional period multiplied by the Base Rental rate. The Fractional Periods are specified in Column 2 below. Base Rental rates contemplate the following maximum use: Day - 8 hrs. (or as stipulated at time of rental); Week - 40 hrs; and Month - 176 hrs. For each hour that the Equipment is in use in excess of the applicable contemplated operation, there shall be paid as rental a sum

equal to the Base Rental rate multiplied by the overtime rate in Column 3 below.

- (2) Should the total rental calculated on the applicable Base Rental rate, exclusive of overtime, exceed the proposed rate for the next longer rental term the lesser rental shall be paid.

	Column 1	Column 2	Column 3
<u>Rental Term</u>	<u>Base Rent Period</u>	<u>Fractional Period</u>	<u>Overtime Rate</u>
Monthly	1 cal mth	.0455xmnthy = rt/day	.0057x mnthy = rt/hr
Wkly	7 cons days	.20 x wkly = rt/day	.025 x wkly = rt/hr
Daily	24 cons hrs	.125 x dly = rt/hr	.125 x dly = rt/hr
Hourly	1 oper hr	1 hour	1 hour

#### C. Condition of Equipment

- (1) When delivered to job site, the Equipment shall be in condition to render efficient, economical, and continuous service and its condition shall comply fully with all applicable Federal and State statutes and any regulations issued there under. Each item of Equipment shall be inspected, tested, and inventoried by Lessor and SRNS at job site upon arrival and immediately prior to return shipment. A joint electronically written report shall be made and copies filed with each of the parties. Lessor shall accept SRNS's report in the event the Lessor fails to participate in such inspections. Such inspections and reports shall fix and determine the rights and obligations of the parties with reference to the condition of the Equipment.
- (2) If SRNS determines that any equipment furnished does not comply with this Order, SRNS shall promptly inform the Lessor in writing. If the Lessor fails to replace the equipment or correct the defects as required by SRNS, SRNS may
- By contract or otherwise, correct the defect or arrange for the lease of similar equipment and shall charge or set off against the Lessor any excess costs occasioned thereby, or
  - Terminate the Order under the Default article of this Order.
- (3) SRNS shall make repairs or, at its option, shall reimburse Lessor for repairs due to damage caused by exceeding manufacturer's rated capacities. All other repairs attributable to equipment failure shall be Lessor's

responsibility. Should Equipment become inoperative because of necessary repairs which are the Lessor's responsibility, rental period will discontinue upon SRNS's notification to the Lessor of such conditions, and rental period will resume only when Equipment is placed in a condition as required under this Section 3. SRNS will notify Lessor prior to making repairs for the account of the Lessor. Unless otherwise specified in the Order, SRNS will furnish all fuel and lubricants and all operators and mechanics for necessary operation, use, and servicing of the Equipment.

- (4) Equipment, when returned to Lessor, shall be in as good condition as when delivered at job site, usual and ordinary wear and tear accepted.

#### D. Rental Period

- (1) The period for which rental is payable for an item of Equipment shall begin on the date Equipment is delivered to the job site, except that if SRNS gives a definite required delivery date to the Lessor prior to shipment, the Rental Period shall not start until such date. However, rent shall accrue only for the period that the equipment is in the possession of SRNS. The Rental Period shall end when the equipment is delivered for shipment to the point of origin or such other return point as may be designated by Lessor, such delivery to be evidenced by a Bill of Lading or other similar evidence covering shipment. If Lessor fails to notify SRNS of destination prior to time Equipment is ready for return shipment, no rental time shall accrue until such notification is given SRNS and Equipment is loaded for Shipment.
- (2) If Equipment is not in required condition, as determined by SRNS, when it arrives at the job site, the Rental Period shall not begin until it shall, at the expense of Lessor, have been placed in proper condition.
- (3) If the inspection report made immediately prior to return shipment establishes that the Equipment is not in condition required of SRNS under the fourth paragraph of Section C of these conditions, SRNS shall do all things necessary to place it in such condition and the Rental Period shall not terminate prior to placing the Equipment in such condition.
- (4) Unless otherwise stated in the Order, SRNS makes no representation or guarantee as to the length of the Rental Period or the amount of rental, which will accrue, for any Equipment, it being the intent that the Equipment may be

rented for as long as SRNS requires. The rental of any Equipment which does not perform to SRNS's satisfaction may be terminated upon notice by SRNS to Lessor.

E. Transportation Costs

If so stated in the Order, transportation will be paid by SRNS F.O.B. original point of shipment and return transportation F.O.B. to original point of shipment or equivalent mileage. Transportation of Equipment shall be accomplished by the most economical means and there shall be paid the actual cost of such transportation. No transportation charges will be paid by SRNS for any Equipment which SRNS determines is not in the condition required by Section C.

F. Loading, Unloading & Transport of Self-Propelled Medium or Heavy Construction Equipment.

Lessor shall ensure that any activity involving the loading, unloading, and transport of self-propelled medium or heavy construction equipment on the Savannah River Site (SRS) (i.e upon delivery and pickup by the Lessor) is performed in a manner that provides for the safety of all personnel involved in the process. Prior to performing any such activities the Lessor shall read and complete the SRNS "Self Propelled Equipment Loading, Unloading and Transport Safety Review Checklist", and provide a copy to the SRNS Portable Equipment Commodity Management Center (PECMC) representative on delivery of the equipment to SRS and also before equipment is loaded for return to the Lessor. A Copy of the checklist can be found on the SRS Home Page or can be provided by the SRNS Procurement Representative on request.

G. Liability Provisions

By acceptance of the Order to which these Conditions apply, Lessor agrees that

- (1) Lessor assumes and hereby relieves SRNS of any and all liability for any loss or damage to the Equipment rented to SRNS occurring during the period from the date of shipment to SRNS to the date of return to Lessor as the result of any cause other than the sole fault or negligence of SRNS;
- (2) SRNS's liability under this provision shall be limited to the fair market value of the Equipment taking into consideration its age and condition immediately prior to said loss or damage.

H. Recapture Provisions

**Note: Optional and in effect only if so stated in the terms and conditions of the Order.**

- (1) If this provision is applicable,

- (i) a recapture valuation mutually agreeable to SRNS and Lessor shall be established and stated in the Order

- (ii) Lessor certifies that there are no encumbrances of any nature, legal or equitable, held by any person against the Equipment rented hereunder, unless so stated in the Order.

- (2) At any time during or at the end of the rental period of the Equipment, SRNS may purchase the Equipment by paying to Lessor the difference between such valuation and total rental paid, plus a charge to cover interest at a rate specified in this Order for the unpaid balance of the equipment valuation for each month or fraction thereof that such Equipment has been under rental to SRNS. Title to such Equipment shall then vest in SRNS and Lessor shall deliver to SRNS such instruments of title as SRNS may require, free of any and all liens and encumbrances.

I. Equipment Operated and Maintained

The following provisions shall be applicable if Equipment is rented on the basis of operation and maintenance by the Lessor:

- (1) All rental rates stipulated in this Order include all charges for operation and maintenance of the Equipment by Lessor.
- (2) Lessor has qualified or will promptly qualify and will make all payments under the terms of the unemployment compensation laws of the state in which the Equipment will be operated. In addition, Lessor will, at Lessor's expense, carry insurance in minimum limits as specified in the Article titled "Work on SRNS, Government or other Premises", included in these General Provisions.
- (3) Lessor shall obtain SRNS's prior approval before employing any Subcontractors/Suppliers. Each Subcontractor/Supplier must also carry insurance as specified in subparagraph (2), supra. Lessor shall carry Contractor's Protective Public Liability, Bodily Injury, and Protective Property Damage insurance of the same minimum limits.
- (4) Lessor shall be responsible for all persons engaged to operate or maintain the Equipment or to perform any other work Lessor is obligated to perform under this Order. None of said persons shall constitute employees of SRNS.
- (5) In the operation of the Equipment, Lessor shall comply with all Federal, State, and local regulations and with all safety regulations in

effect on the SRNS site. In addition, Lessor shall

- (i) Comply with recognized safety practices for the type of work being performed including the furnishing of necessary safety equipment
  - (ii) Conduct and protect operations in such a manner as to avoid exposing others to injury.
- (6) Lesser shall ensure that all equipment operators have appropriate qualifications and experience for operating the specified equipment, to include any applicable State, Federal or local licenses or certifications.

J. Notices

Any notice to be given hereunder shall be mailed to the party to be notified, at the address set forth in the Order, by registered mail, and shall be considered to be given when so mailed.

**G.6 GENERAL EMPLOYEE TRAINING AND ANNUAL REFRESHER TRAINING FOR SUBCONTRACT EMPLOYEES**

*The following terms are applicable if performance of this Order will require the Supplier/Subcontractor's employee(s) to perform work on SRS premises for more than ten (10) working days.*

A. General Employee Training (GET)

- (1) The Subcontractor/Supplier shall inform his employees and the employees of his Subtier Subcontractors/Suppliers and agents that it is the policy of Savannah River Nuclear Solutions, LLC (SRNS) to adhere to the requirements contained in the DOE Order entitled "Personnel Selection, Qualification and Training Requirements," which requires any individual, employed either full or part-time at any DOE reactor or non-reactor facility to receive selected general training.
- (2) Successful Completion Required  
Said employees, referred to in the remainder of this document as "individual", must successfully complete the training known as "General Employee Training" (GET) as offered by the SRS. The GET sessions are given by a Savannah River Site (SRS) authorized GET instructor. There are three categories of GET.
  - (i) Category 1 consists of viewing a video that lasts for one hour. This category is limited to delivery personnel, visitors, and other temporary personnel that require badged access to the general site and property protection areas and are typically on site greater than 10 days, but not consecutively, in a calendar year.

- (ii) Category 2 consists of viewing a video and a written examination, and lasts for approximately two hours. This category would apply to visitors or other temporary personnel that require badged access to the general site and property protection areas and are on site greater than 10 days consecutively in a calendar year, and additional training is not required as determined by SRNS.

- (iii) Category 3 consists of eight hours of training and includes instructor lecture along with audio and visual aids and a written examination. This category applies to individuals who require badged access to the general site, property protection areas, or security controlled areas and additional training is required, as determined by SRNS.

(3) Successful Completion Defined: Successful completion occurs when the individual

- (i) Is scheduled for GET,
- (ii) Attends the GET session,
- (iii) Obtains a test score of 70% or greater on the written examination, if required, (100% is the highest obtainable score), and
- (iv) Properly completes all documents (rosters, exam answer sheet, etc.).

(4) Unsuccessful Completion Defined: If the individual fails to successfully complete GET, the individual is given a failure notice and is to notify the Subcontract Technical Representative (STR)End/User for rescheduling for remedial training or for a re-test. The individual will be allowed several chances to successfully complete the GET. Continued failure to successfully complete GET will result in resolution by the STR/End User.

(5) Scheduling for GET

The STR/End User shall direct the individual to the appropriate training center to attend the GET session. GET training is scheduled subject to demand.

(6) Records

GET records will be maintained by SRNS.

B. Annual Refresher Training

Refresher Training is required after an individual's initial successful completion of all categories of GET, regardless of the individual's present employer. Category 1 and Category 2 GET training must be repeated annually. For Category 3, successful completion of Consolidated Annual Training (CAT) is required. The Subcontractor/Supplier is responsible for

scheduling its employees for this training. The STR/End User may be contacted for assistance.

#### **G.7 SECURITY EDUCATION REQUIREMENTS FOR SUBCONTRACTORS/SUPPLIERS**

The following items are applicable if performance of this Subcontract will require the Subcontractor/Supplier or the Subcontractor's/Supplier's employee(s) to receive a security badge.

##### **A. Subcontractors/Suppliers Security Education Coordinator**

- (1) If this Order will require a force of more than thirty (30) subcontract employees receive badges, then the Subcontractor/Supplier shall provide to the SRNS Security Education Office, the name of its representative appointed to administer its Security Education Program. This representative shall be referred to as the Subcontractor/Supplier Security Education Coordinator (SSEC).
- (2) If this Order will require that less than thirty (30) subcontract employees receive badges, then the SRNS Subcontract Technical Representative (STR)/End User will perform the activities discussed in this Supplement.

##### **B. Company Roster**

The SSEC will be responsible for providing the STR/End User with a roster of all subcontract personnel receiving a badge. At a minimum the data shall include name, social security number, work telephone number, clearance level and place where work is generally performed. This list shall be kept current and updated every sixty (60) days.

##### **C. Initial Briefing**

The SSEC will ensure that all subcontract personnel, regardless of clearance level, receive an Initial Security Briefing. This briefing is shown during General Employee Training. This briefing consists of a videotape shown during GET, or at the time of badging for those individuals not required to attend GET.

##### **D. Comprehensive Briefing**

If subcontract personnel have a clearance at the inception of this Order, or receive a clearance at any time during the course of the Order, the SSEC/STR/End User will ensure that those subcontract employees receive a Comprehensive Briefing from SRNS.

##### **E. Annual Refresher Briefing**

The SSEC/STR/End User shall ensure that all subcontract employees receive, at least once in a twelve (12) month period, an Annual Security Refresher briefing from SRNS. This briefing is provided during GET Refresher Training.

##### **F. Foreign Travel Briefing**

If a subcontract employee plans a trip to a sensitive country, whether on official business or for pleasure, the SSEC/STR/End User is responsible for ensuring that the individual receives a Foreign Travel Briefing from SRNS before departing and a Debriefing upon return. The OPSEC Officer is responsible for these Briefings.

##### **G. Badge Retrieval at Termination**

The Subcontractor/Supplier is responsible for ensuring that badges are returned or accounted for when a subcontract employee terminates employment or when an Order is completed. The employee must report to Employment Processing Center, for proper completion of out-processing and badge return. This effort should be coordinated with the SRNS STR/End User.

##### **H. Termination Briefing**

When a subcontract employee terminates employment or is reassigned, the SSEC/STR/End User will ensure that a Termination Briefing by SRNS is given and the appropriate forms are executed. Briefing materials and appropriate forms are provided by SRNS.

#### **G.8 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)**

In the performance of this Order, the Subcontractor/Supplier is responsible for complying with the following requirements and for flowing down all requirements to Subtier Subcontractors/Suppliers.

A. The Subcontractor/Supplier ensures that access to UCNI is provided to only those individuals authorized for routing or special access (see DOE O 471. 1B). Subcontractor/Supplier may provide access to material or data containing Unclassified Controlled Nuclear Information (UCNI) utilized in the performance of this Order only to employees who are citizens of the United States.

B. The Subcontractor/Supplier ensures that matter identified as UCNI is protected in accordance with the instructions contained in DOE O 471. 1B.) Any material or data containing UCNI which is stored on computer systems must be protected, and the protective measures and/or policies must be specified in a Computer Protection Plan approved by the SRNS Computer Security organization. Adherence to the Plan is required during the performance of this Order.

C. Material or data containing UCNI shall be disposed of in a manner as described DOE O 471. 1B). At a minimum, UCNI matter must be destroyed by using strip cut shredders that result in particles of no more than 1/4-inch wide strips. Documents containing UCNI may also be disposed of in the same manner that is authorized

for Subcontractor/Supplier disposition of other classified material or data. If the above disposal methods are not available to the Supplier, the Subcontractor/Supplier may return the UCNI matter to the STR/End User for disposition, with the prior approval of the STR/End User.

- D. The Subcontractor/Supplier shall report to the SRNS Security Office or the SRNS Procurement Representative any incidents involving the unauthorized disclosure of UCNI.
- E. If performance of work under this Order results in the generation of unclassified documents that contain UCNI, the Subcontractor/Supplier shall have a sufficient number of trained UCNI review personnel to ensure the prompt and proper review of generated material or data to provide for the identification, marking, and proper handling of material or data determined to contain UCNI. The Subcontractors/Suppliers Reviewing Officials shall apply or authorize the application of UCNI markings to any unclassified matter that contains UCNI in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part C.
- F. If the Subcontractor/Supplier has a formally designated Classification Officer, the Classification Officer-
  - (1) Serves as a Reviewing Official for information under his/her cognizance;
  - (2) Trains and designates other Reviewing Officials in his/her organization, subordinate organizations, and Subtier Subcontractors/Suppliers and maintains a current list of all Reviewing Officials; and
  - (3) May overrule UCNI determinations made by Reviewing Officials under his/her cognizance.
- G. If the Subcontractor/Supplier has no formally designated Classification Officer, the Subcontractor/Supplier submits a request for the designation of Reviewing Officials to the local Federal Classification Officer in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part B.

## **G.9 SCIENTIFIC AND TECHNICAL INFORMATION**

Written Electronic submissions of technical reports will consist of two virus-free copies that are readable in the following formats:

- (1) Text will be submitted in native software (that is compatible with the suite of document creation software currently used at SRS) (fonts identified) or in RTF (rich text format).
- (2) Embedded objects and files that are linked to a document must be supplied as well, as follows:

- (i) Raster images (for example, photographs) will be submitted as TIFF or EPS @ resolution>100 dpi.
- (ii) Vector art (for example, line art) will be submitted as EPS images.
- (iii) Data-driven displays (e.g., spreadsheet charts) must be accompanied by data set used to generate them.

## **G.10 RESERVED**

## **G.11 COUNTERINTELLIGENCE**

- A. The Subcontractor/Supplier shall take all reasonable precautions in the work under this Subcontract to protect SRNS/DOE programs, facilities, technology, personnel, unclassified sensitive information and classified matter from foreign intelligence threats and activities conducted for governmental or industrial purposes, in accordance with DOE Order 475-1, Counterintelligence Program; Executive Order 12333, U.S. Intelligence Activities; and other pertinent national and Departmental Counterintelligence requirements.
- B. The Subcontractor/Supplier shall comply with requirements established by the DOE-SR Counterintelligence Officer. The DOE-SR Counterintelligence Officer will be responsible for conducting defensive Counterintelligence briefings and debriefings of Subcontractor/Supplier employees traveling to foreign countries or interacting with foreign nationals. The Subcontractor/Supplier shall be responsible for requesting defensive Counterintelligence briefings and debriefings of Subcontractor/Supplier employees who have traveled to foreign countries or interacted with foreign nationals. The Subcontractor shall coordinate Counterintelligence Awareness training activities with the SRNS Procurement Representative. The Subcontractor/Supplier shall immediately report targeting, suspicious activity and other Counterintelligence concerns to the SRNS Procurement Representative; and provides assistance to other elements of the U.S. Intelligence Community as stated in the aforementioned Executive Order, the DOE Counterintelligence Order, and other pertinent national and Departmental Counterintelligence requirements.

## **G.12 NON-PROLIFERATION**

If any item(s) provided under this Order are foreign made and will require importation into the United States to fulfill the requirements under this Order, the Subcontractor/Supplier represents that delivery of such

items will not violate any non-proliferation laws, rules or regulations of the country or countries from which the materials are to be exported.

### **G.13 LIMITATION OF FUNDS**

***NOTE: This article is applicable only if this Order is partially funded.***

- A. Of the total price of this Order, the sum of \$\_\_\_\_\_ is presently available for payment and allotted to this Order. It is anticipated that additional funds will be allocated to the Order in accordance with the following schedule until the total price of the Order is funded:
- B. The Subcontractor/Supplier agrees to perform or have performed work on this Order up to the point at which, if this Order is terminated pursuant to the Termination For Convenience of SRNS article of this Order, the total amount payable by SRNS (including amounts payable for Subcontracts and settlement costs) pursuant to the Termination For Convenience of SRNS article would, in the exercise of reasonable judgment by the Subcontractor/Supplier, approximate the total amount at the time allotted to the Order. The Subcontractor/Supplier is not obligated to continue performance of the work beyond that point. SRNS is not obligated in any event to pay or reimburse the Subcontractor/Supplier more than the amount from time to time allotted to the Order, anything to the contrary in the Termination For Convenience of SRNS article notwithstanding.
- C. (1) It is contemplated that funds presently allotted to this Order will cover the work to be performed until\_\_\_\_.
- (2) If funds allotted are considered by the Subcontractor/Supplier to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Subcontractor/Supplier shall notify SRNS in writing when within the next 60 days the work will reach a point at which, if the Order is terminated pursuant to the Termination For Convenience of SRNS article of the Order, the total amount payable by SRNS (including amounts payable for Subcontracts and settlement costs) pursuant to the Termination For Convenience of SRNS article will approximate 75 percent of the total amount then allotted to the Order.
- (3) (i) The notice shall state the estimated date when the point referred to in subparagraph C 2 of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it.
- (ii) The Subcontractor/Supplier shall, sixty days in advance of the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it, advise SRNS in writing as to the estimated amount of additional funds required for the timely performance of the Order for a further period as may be specified in the Order or otherwise agreed to by the parties.
- (4) If, after the notification referred to in section C 3 (ii) of this clause, additional funds are not allotted by the date specified in subparagraph C 1 of this clause, or an agreed date substituted for it, SRNS shall, upon the Subcontractor's/Supplier's electronic request, terminate this Order on that date or on the date set forth in the request, whichever is later, pursuant to the Termination For Convenience of SRNS article.
- D. When additional funds are allotted from time to time for continued performance of the work under this Order, the parties shall agree on the applicable period of Order performance to be covered by these funds. The provisions of paragraphs B and C of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the Order shall be modified accordingly.
- E. If, solely by reason of SRNS's failure to allot additional funds in amounts sufficient for the timely performance of this Order, the Subcontractor/Supplier incurs additional costs or is delayed in the performance of the work under this Order, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the work to be performed.
- F. SRNS may at any time before termination, and, with the consent of the Subcontractor/Supplier, after notice of termination, allot additional funds for this Order.
- G. The provisions of this clause with respect to termination shall in no way be determined to limit the rights of SRNS under the default article of this Order. This clause shall become inoperative upon the allotment of funds for the total price of the work under this Order except for rights and obligations then existing under this clause.
- H. Nothing in this clause shall affect the right of SRNS to terminate this Order pursuant to the Termination for Convenience of SRNS article of the Order.



#### **G.14 PROGRESS PAYMENTS**

***NOTE: If applied, this article consists of additional paragraphs to Article A.6. In the event of an inconsistency between these additional paragraphs and Article A.6, paragraphs A-E, these additional paragraphs take precedence.***

- A. SRNS shall make progress payments monthly as the work proceeds or at more frequent intervals as determined by SRNS, on estimates of work accomplished which meet the standards of quality established under the Order, as approved by SRNS. If requested by SRNS, the Subcontractor/Supplier shall furnish a breakdown of the total Order price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates SRNS may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Subcontractor/Supplier at locations other than the site may also be taken into consideration if:
  - (1) Consideration is specifically authorized by this Order; and
  - (2) The Subcontractor/Supplier furnished satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Order.
- B. All materials and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as:
  - (1) Relieving the Subcontractor/Supplier from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
  - (2) Waiving the right to SRNS to require the fulfillment of all the terms of the Order.
- C. In making progress payments, SRNS shall retain, until completion and acceptance of all work, ten (10) percent of the estimated value of work accomplished as of the date of the current application for payment. After the estimated value of Work accomplished exceeds fifty (50) percent of the Order amount, and provided the Subcontractor/Supplier is proceeding with the Work in the manner and time satisfactory to SRNS, SRNS may reduce the amount to be retained to five (5) percent of the estimated value of Work accomplished as of the date of the current application for payment, or to such lesser amount, including none, as may be decided upon by SRNS.
- D. Notwithstanding any provision of this Order, progress payments shall not exceed 80 percent on work accomplished on undefinitized Order

actions. An Order action is any action resulting in an Order, as defined as "Contract" in FAR Subpart 2.1, including Order modifications for additional supplies or services, but not including Order modifications that are within the scope and under the terms of the Order, such as Order modifications issued pursuant to the "Changes, Extras and Substitution" Article, or funding and other administrative changes.

#### **G.15 VARIATION IN ESTIMATED QUANTITY**

***NOTE: If invoked in this Order, this Article applies to services only.***

If the quantity of a unit-priced item in this Order is an estimated quantity and the actual quantity of the unit-priced item varies more than fifteen percent above or below the estimated quantity, an equitable adjustment in the Order price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Subcontractor/Supplier may request, in writing, an extension of time, to be received by SRNS within 10 days from the beginning of the delay, or within such further period as may be granted by SRNS before the date of final settlement of the Order. Upon the receipt of a written electronic request for an extension, SRNS shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of SRNS, is justified.

#### **G.16 CHANGES, EXTRAS AND SUBSTITUTIONS - (SUPPLEMENT)**

***NOTE: Inclusion of this Article supplements Article A.4, Changes.***

- A. In the event of an emergency which SRNS determines endangers life or property, SRNS may use oral Orders to Subcontractor/Supplier for any work required by reason of such emergency. Subcontractor/Supplier shall commence and complete such emergency work as directed by SRNS. Such Orders will be confirmed by Change Order.
- B. Pricing of Adjustments  
When costs are a factor in any determination of an Order adjustment pursuant to the General Provision titled "Changes", or any other provision of this Order, such costs, upward or downward, shall be submitted by Subcontractor/Supplier in the form of a lump sum proposal. The proposal shall include an itemized breakdown of all increases or decreases in at least the following detail:
  - (1) Direct Labor.

- (i) Charges for labor furnished and used by Subcontractor/Supplier shall be allowable for all manual classifications up to and including foremen. Charges shall not be included for superintendents, assistant superintendents, general foreman, surveyors, office personnel, timekeepers, a maintenance mechanics; these costs are recovered in the overhead and profit rates established by this Article. Labor rates used to calculate the costs shall be those rates in effect during accomplishment of the changes.
- (ii) Direct labor costs shall include, in addition to direct payroll costs, payroll taxes, insurance, vacation allowance, subsistence, travel time, overtime premium and any other payroll additives required to be paid by Subcontractor/Supplier by law or labor agreement(s), e.g. Project Agreement, collective bargaining agreement(s), etc. Copies of certified pertinent payrolls shall be submitted to SRNS.
- (2) Equipment.
- (i) Charges shall be allowable for the rental and operation of all Subcontractor's/Supplier's equipment furnished and used by Subcontractor/Supplier, except for equipment or tools with a new cost at point of origin of Five Hundred Dollars or less each, which are determined to be covered in the overhead and profit rates established by this Article.
- (ii) For Subcontractor/Supplier -owned equipment, reasonable equipment charges shall be allowed in accordance with the following:
- Rental rates as agreed upon in the Order; or
  - Rental rates not greater than seventy percent (70%) of Data Quest Blue Book daily rental rates applicable for the period of performance of the change; and
  - Appropriately discounted to stand-by rates for idle time reasonably required.
- (iii) When the operated use of equipment is infrequent and, as determined by SRNS, such equipment need not remain at the work site continuously, charges shall be limited to actual hours of use. Equipment not operating but retained at the location of changes at SRNS's direction shall be charged at the standby rate.
- (iv) For Rental Equipment not owned by Subcontractor/Supplier, charges will be computed on the basis of actual invoice cost.
- (v) For the cost of both rented and owned to be allowable, Subcontractor/Supplier must justify and SRNS agree that the individual pieces of equipment are needed, are appropriate for the work, and that the mobilization costs are allocable to the change.
- (3) Materials  
Approved incurred costs for material incorporated into the changed Work or required for temporary facilities made necessary by the change shall be allowable at net cost delivered to the Jobsite.
- (4) Overhead, Profit and All Other Costs
- Overhead, profit and markup percentages included in the proposal, shall include, but not be limited to, insurance, use of small tools, incidental job burdens, and general home and field office expense. No percentages for overhead, profit or Subcontractor/Supplier markup will be allowed on employment taxes under FICA and FUTA.
  - The percentages for overhead and profit will be negotiated and may vary according to the nature, extent and complexity of the Work involved. The maximum percentage for the overhead, profit and markup shall not exceed those shown below.
  - For work subcontracted to a Subtier by Subcontractor/Supplier, the proposal submitted to SRNS shall only include one overhead percentage and one profit percentage in addition to Subcontractor's/Supplier's markup. No more than these three percentages will be allowed regardless of the number of tiers of Subcontractors/Suppliers. The Subtier's percentage of overhead and profit shall not exceed those shown below.

<u>Subcontracted Work</u>	<u>Overhead</u>	<u>Profit</u>	<u>Markup</u>
\$1 to \$19,999	0%	0%	8.0%
\$20,000 to \$49,999	0%	0%	5.5%
\$50,000 and above	0%	0%	2.0%
<u>Direct Hire Work:</u>	<u>Overhead</u>	<u>Profit</u>	<u>Markup</u>
\$1 to \$19,999	10.0%	10.0%	0%
\$20,000 to \$49,999	7.5%	7.5%	0%
\$50,000 and above	6.75%	6.75%	0%

#### **G.17 RIGHT OF FIRST REFUSAL OF EMPLOYMENT**

The scope of work described herein as currently being performed by the SRNS Procurement Representative (SRNS) employees and award of an Order may displace these workers. Consistent with section 3161 of the National Defense Authorization Act (PL 102-484), if the Seller needs to hire additional employees beyond those already part of its existing work force as of the date of this solicitation in order to satisfy the performance requirements set forth by the scope of work in this solicitation, the Seller must first consider the employment of qualified displaced DOE contractor employees who meet the 3161 Job Attachment Test prior to using other avenues to fill that employment need. At the time of award of the Order, the Procurement Representative shall make available to the Seller a list of displaced employees with sufficient information to allow for contact. This requirement shall be included in the resultant Order and be in effect from the date of award of the Order.

#### **G.18 COPYRIGHTS FOR SRNS DIRECTED TECHNICAL PERFORMANCE**

Subcontractor/Supplier shall cause its employee(s) to assign to SRNS all rights under the copyright in all works of authorship prepared at the direction of SRNS during the term of this Order. Subcontractor/Supplier shall include terms in its arrangements with its employee(s) to require such assignments to SRNS. To the extent that such works of authorship are considered to be works made for hire for Subcontractor/Supplier, Subcontractor/Supplier agrees to assign and does hereby assign all of its rights under the copyrights in such works to SRNS or the U. S. Government.

#### **G.19 PERFORMANCE-BASED MILESTONE PAYMENTS**

- A. Amount of payments and limitations on payments.  
Subject to such other limitations and conditions as are specified in this Subcontract and this article, the amount of payments and limitations on payments shall be specified in the Subcontract's description of the basis for payment.
- B. Subcontractor/Supplier request for performance-based payment.  
The Subcontractor/Supplier may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to SRNS. Unless otherwise authorized by the SRNS, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Subcontractor's/Supplier's request shall contain

the information and certification detailed in paragraphs (L) and (M) of this article.

#### **C. Approval and payment of requests.**

- (1) The Subcontractor/Supplier shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The SRNS Procurement Representative shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the Subcontract. SRNS may, at any time, require the Subcontractor/Supplier to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.
- (2) The approval by SRNS of a request for performance-based payment does not constitute an acceptance by SRNS and does not excuse the Subcontractor/Supplier from performance of obligations under this Subcontract.

#### **D. Liquidation of performance-based payments.**

- (1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole Subcontract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.
- (2) If at any time the amount of payments under this Subcontract exceeds any limitation in this Subcontract, the Subcontractor/Supplier shall repay to SRNS the excess. Unless otherwise determined by SRNS, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

#### **E. Reduction or suspension of performance-based payments.**

SRNS may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the Subcontract, or take a combination of these actions

after finding upon substantial evidence any of the following conditions:

- (1) The Subcontractor/Supplier failed to comply with any material requirement of this Subcontract (which includes paragraphs (H) and (I) of this clause).
- (2) Performance of this contract is endangered by the Subcontractor's/Supplier's—
  - (i) Failure to make progress; or
  - (ii) Unsatisfactory financial condition.
- (3) The Subcontractor/Supplier is delinquent in payment of any Subtier Subcontractor/Supplier or Subcontractor/Supplier under this Subcontract in the ordinary course of business.

F. Title.

- (1) Title to the property described in this paragraph (F) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this Subcontract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this Subcontract.
- (2) "Property," as used in this clause, includes all of the following described items acquired or produced by the Subcontractor/Supplier that are or should be allocable or properly chargeable to this Subcontract under sound and generally accepted accounting principles and practices:
  - (i) Parts, materials, inventories, and work in process;
  - (ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this Subcontract;
  - (iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (F)(2)(ii) of this clause; and
  - (iv) Drawings and technical data, to the extent the Subcontractor/Supplier or Subcontractors/Suppliers are required to deliver them to SRNS by other articles of this Subcontract.
- (3) Although title to property is in the Government under this article, other applicable articles of this Subcontract (e.g., the termination or special tooling articles) shall determine the handling and disposition of the property.

- (4) The Subcontractor/Supplier may sell any scrap resulting from production under this Subcontract, without requesting SRNS's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to SRNS.
- (5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Subcontractor/Supplier must obtain SRNS's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be determined not to be in compliance with the terms of the Subcontract and not payable (if the property is part of or needed for performance), and the Subcontractor/Supplier shall refund the related performance-based payments in accordance with paragraph (D) of this clause.
- (6) When the Subcontractor/Supplier completes all of the obligations under this Subcontract, including liquidation of all performance-based payments, title shall vest in the Subcontractor/Supplier for all property (or the proceeds thereof) not—
  - (i) Delivered to, and accepted by, SRNS under this Subcontract; or
  - (ii) Incorporated in supplies delivered to, and accepted by, SRNS under this Subcontract and to which title is vested in the Government under this article.
- (7) The terms of this Subcontract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this article.

G. Risk of loss.

Before delivery to and acceptance by SRNS, the Subcontractor/Supplier shall bear the risk of loss for property, the title to which vests in the Government under this article, except to the extent SRNS expressly assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be determined to be not in compliance with the terms of the Subcontract and not payable (if the property is part of or needed for performance), and the Subcontractor/Supplier shall refund the related performance-based payments in accordance with paragraph (D) of this article.

H. Records and controls.

The Subcontractor/Supplier shall maintain records and controls adequate for administration of this

article. The Subcontractor/Supplier shall have no entitlement to performance-based payments during any time the Subcontractor's/Supplier's records or controls are determined by SRNS to be inadequate for administration of this article.

I. Reports and SRNS access.

The Subcontractor/Supplier shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by SRNS for the administration of this article and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Subcontractor/Supplier shall give SRNS reasonable opportunity to examine and verify the Subcontractor's/Supplier's records and to examine and verify the Subcontractor's/Supplier's performance of this Subcontract for administration of this article.

J. Special terms regarding default.

If this Subcontract is terminated under the Default article,

- (1) the Subcontractor/Supplier shall, on demand, repay to SRNS the amount of unliquidated performance-based payments, and
- (2) title shall vest in the Subcontractor/Supplier, on full liquidation of all performance-based payments, for all property for which SRNS elects not to require delivery under the Default article of this Subcontract. SRNS shall be liable for no payment except as provided by the Default article.

K. Reservation of rights.

- (1) No payment or vesting of title under this clause shall—
  - (i) Excuse the Subcontractor/Supplier from performance of obligations under this Subcontract; or
  - (ii) Constitute a waiver of any of the rights or remedies of the parties under the Subcontract.
- (2) SRNS's rights and remedies under this article—
  - (i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this Subcontract; and
  - (ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this article or the exercise of any other right, power, or privilege of SRNS.

L. Content of Subcontractor's/Supplier's request for performance-based payment.

The Subcontractor's/Supplier's request for performance-based payment shall contain the following:

- (1) The name and address of the Subcontractor/Supplier;
- (2) The date of the request for performance-based payment;
- (3) The Subcontract number and/or other identifier of the Subcontractor/Supplier Order under which the request is made;
- (4) Such information and documentation as is required by the Subcontract's description of the basis for payment; and
- (5) A certification by a Subcontractor/Supplier official authorized to bind the Subcontractor/Supplier, as specified in paragraph (M) of this clause.

M. Content of Subcontractor's/Supplier's certification.

As required in paragraph (L) (5) of this article, the Subcontractor/Supplier shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that—

- (1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Subcontractor/Supplier, in accordance with the Subcontract and the instructions of SRNS;
- (2) (Except as reported in writing on \_\_\_\_\_), all payments to Subtier Subcontractors/Suppliers under this Subcontract have been paid, or will be paid, currently, when due in the ordinary course of business;
- (3) There are no encumbrances (except as reported in writing on \_\_\_\_\_) against the property acquired or produced for, and allocated or properly chargeable to, the Subcontract which would affect or impair the Government's title;
- (4) There has been no materially adverse change in the financial condition of the Subcontractor/Supplier since the submission by the Subcontractor/Supplier to SRNS of the most recent written electronic information dated; \_\_\_\_\_ and
- (5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the Subcontract, and the amount of all payments

under the Subcontract will not exceed any limitation in the Subcontract.

*(This Order incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, SRNS will make their full text available. Reference Article A.40, "Supplemental Definitions for FAR and DEAR Clauses Incorporated by Reference".)*

**\*G.20 CLASSIFICATION/ DECLASSIFICATION  
(SEP 1997)**

DEAR 952.204-70

**\*G.21 FILING OF PATENT APPLICATIONS-  
CLASSIFIED SUBJECT MATTER (APR  
1984)**

FAR 52.227-10

**\*G.22 PATENT RIGHTS - ACQUISITION BY  
THE GOVERNMENT (SEP 1997)**

DEAR 952.227-13

**\*G.23 PATENT RIGHTS - RETENTION BY THE  
CONTRACTOR (SHORT FORM) (FEB  
1995)**

DEAR 952.227-11

**\*G.24 RIGHTS IN DATA – GENERAL (JUN 1987)**  
FAR 52.227-14, as modified pursuant to DEAR 927.409(a) (1)

**\*G.25 RIGHTS IN DATA - ALTERNATE II (JUN  
1987)**

FAR 52.227-14, as modified pursuant to DEAR 927.409(a) (1)

**\*G.26 RIGHTS IN DATA - ALTERNATE III (JUN  
1987)**

FAR 52.227-14, as modified pursuant to DEAR 927.409(a) (1)

**\*G.27 ADDITIONAL DATA REQUIREMENTS  
(JUN 1987)**

FAR 52.227-16

**\*G.28 ORGANIZATIONAL CONFLICTS OF  
INTEREST (JUN 1997) ALTERNATE I**

DEAR 952.209-72

**\*G.29 SERVICE CONTRACT ACT OF 1965 AS  
AMENDED (NOV 2007)**

FAR 52.222-41

**\*G.30 STATEMENT OF EQUIVALENT RATES  
FOR FEDERAL HIRES (MAY 1989)**

FAR 52.222-42

**\*G.31 RESERVED**

**\*G.32 FAIR LABOR STANDARDS ACT AND  
SERVICE CONTRACT ACT -PRICE  
ADJUSTMENT (MULTIPLE YEAR AND  
OPTION CONTRACTS) (NOV 2006)**

FAR 52.222-43

**\*G.33 FAIR LABOR STANDARDS ACT AND  
SERVICE CONTRACT ACT - PRICE  
ADJUSTMENT (FEB 2002)**

FAR 52.222-44

**\*G.34 COST ACCOUNTING STANDARDS (CAS)  
(APR 1998)**

FAR 52.230-2

**\*G.35 ADMINISTRATION OF COST  
ACCOUNTING STANDARDS (APR 2005)**

FAR 52.230-6

**\*G.36 DISCLOSURE AND CONSISTENCY OF  
COST ACCOUNTING PRACTICES (APR  
1998)**

FAR 52.230-3

**\*G.37 PRIVACY ACT (APR 1984)**

FAR 52.224-1 and 52.224-2

**\*G.38 DUTY FREE ENTRY (FEB 2000)**

FAR 52.225-8

**\*G.39 PREFERENCE FOR U.S.-FLAG AIR  
CARRIERS (JUN 2003)**

FAR 52.247-63

**\*G.40 ACQUISITION OF REAL PROPERTY  
(APR 1984)**

DEAR 952.217-70

**\*G.41 GOVERNMENT PROPERTY FURNISHED  
"AS IS" (APR 1984)**

FAR 52.245-19

**\*G.42 DIFFERING SITE CONDITIONS (APR  
1984)**

FAR 52.236-2

**\*G.43 SUSPENSION OF WORK (APR 1984)**

FAR 52.242-14

**\*G.44 FIRST ARTICLE APPROVAL – TESTING  
(SEP 1989)**

FAR 52.209-4

**\*G.45 PRINTING (DEC 2000)**

DEAR 970.5208-1

**\*G.46 FOREIGN TRAVEL (DEC 2000)**  
DEAR 952.247-70

**\*G.47 PRICE REDUCTION FOR DEFECTIVE  
COST OR PRICING DATA (OCT 1997)**  
FAR 52.215-10

**\*G.48 PRICE REDUCTION FOR DEFECTIVE  
COST OR PRICING DATA—  
MODIFICATIONS (OCT 1997)**  
FAR 52.215-11

**\*G.49 PENSION ADJUSTMENTS AND ASSET  
REVERSIONS (OCT 2004)**  
FAR 52.215-15

**\*G.50 REVERSION OR ADJUSTMENT OF  
PLANS FOR POST RETIREMENT  
BENEFITS (PRB) OTHER THAN  
PENSIONS (JUL 2005)**  
FAR 52.215-18

**\*G.51 REQUIRED SOURCES FOR HELIUM  
AND HELIUM USAGE DATA (APR 2002)**  
FAR 52.208-8

**\*G.52 ACCOUNTS, RECORDS AND  
INSPECTIONS (DEC 2007)**  
DEAR 970.5232-3  
(Paragraphs (a) through (h) only)

**G.53 SECURITY REQUIREMENTS (JUN 2009)**  
DEAR 952.204-2

**NOTE: Applicable if under the terms of this Order, CONSULTANT will be required to possess access authorizations (L or Q Security Clearance). As prescribed in 904.404(d) (1), the following clause shall be included in Subcontracts entered into under section 31 (research assistance, 42 U.S.C. 2051), or section 41 (ownership and operation of production facilities, 42 U.S.C. 2061) of the Atomic Energy Act of 1954, and in other Subcontracts which involve or are likely to involve classified information or special nuclear material.**

- A. **Responsibility.** It is the Subcontractor's/Supplier's duty to protect all classified information, special nuclear material and other DOE property. The Subcontractor/Supplier shall, in accordance with DOE security regulations and requirements, be responsible for protecting all classified information and all classified matter (including documents, material and special nuclear material) which are in the Subcontractor's/Supplier's possession in connection with the performance of work under this Subcontract against sabotage, espionage, loss or theft. Except as otherwise expressly provided

in this Subcontract, the Subcontractor/Supplier shall, upon completion or termination of this Subcontract, transmit to DOE any classified matter or special nuclear material in the possession of the Subcontractor/Supplier or any person under the Subcontractor's/Supplier's control in connection with performance of this Subcontract. If retention by the Subcontractor/Supplier of any classified matter is required after the completion or termination of the Subcontract, the Subcontractor/Supplier shall identify the items and classification levels and categories of matter proposed for retention, the reasons for the retention, and the proposed period of retention. If the retention is approved by the DOE Contracting Officer, the security provisions of the Subcontract shall continue to be applicable to the classified matter retained. Special nuclear material shall not be retained after the completion or termination of the Subcontract.

- B. **Regulations.** The Subcontractor/Supplier agrees to comply with all security regulations and Subcontract requirements of DOE in effect on the date of award.
- C. **Definition of Classified Information.** The term *Classified Information* means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, or information determined to require protection against unauthorized disclosure under Executive Order 12958, *Classified National Security Information*, as amended, or prior executive Orders, which is identified as *National Security Information*.
- D. **Definition of Restricted Data.** The term *Restricted Data* means all data concerning design, manufacture, or utilization of atomic weapons, production of special nuclear material; or the use of special nuclear material in the production of energy, but excluding data declassified or removed from the Restricted Data category pursuant to 42 U.S.C. 2162 [Section 142, as amended, of the Atomic Energy Act of 1954].
- E. **Definition of Formerly Restricted Data.** The term *"Formerly Restricted Data"* means information removed from the Restricted Data category based on a joint determination by DOE or its predecessor agencies and the Department of Defense that the information: (1) relates primarily to the military utilization of atomic weapons; and (2) can be adequately protected as National Security Information. However, such information is subject to the same restrictions on transmission to other countries or regional defense organizations that apply to Restricted Data.
- F. **Definition of National Security Information.**



The term "National Security Information" means information that has been determined, pursuant to Executive Order 12958, Classified National Security Information, as amended, or any predecessor Order, to require protection against unauthorized disclosure, and that is marked to indicate its classified status when in documentary form.

- G. **Definition of Special Nuclear Material.** The term "special nuclear material" means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which, pursuant to 42 U.S.C. 2071 [section 51 as amended, of the Atomic Energy Act of 1954] has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

H. **Access Authorizations of Personnel.**

- a. The Subcontractor/Supplier shall not permit any individual to have access to any classified information or special nuclear material, except in accordance with the Atomic Energy Act of 1954, and the DOE's regulations and Subcontract requirements applicable to the particular level and category of classified information or particular category of special nuclear material to which access is required.
  - b. The Subcontractor/Supplier must conduct a thorough review, as defined at 48 CFR 904.401, of an uncleared applicant or uncleared employee, and must test the individual for illegal drugs, (SRNS to provide this testing), prior to selecting the individual for a position requiring a DOE access authorization.
- I. **A review must:** Verify an uncleared applicant's or uncleared employee's educational background, including any high school diploma obtained within the past five years, and degrees or diplomas granted by an institution of higher learning; contact listed employers for the last three years and listed personal references; conduct local law enforcement checks when such checks are not prohibited by state or local law or regulation and when the uncleared applicant or uncleared employee resides in the jurisdiction where the Subcontractor/Supplier is located; and conduct a credit check and other checks as appropriate.
- a. Subcontractor/Supplier reviews are not required for an applicant for DOE access authorization who possesses a current access authorization from DOE or another Federal agency, or whose access authorization may be reapproved without a federal background investigation pursuant to Executive Order 12968, Access to Classified Information (August 4, 1995), Sections 3.3(c) and (d).
  - b. In collecting and using this information to make a determination as to whether it is appropriate to select an uncleared applicant or uncleared employee to a position requiring an access authorization, the Subcontractor/Supplier must comply with all applicable laws, regulations, and Executive Orders, including those:
    - (i) governing the processing and privacy of an individual's information, such as the Fair Credit Reporting Act, Americans with Disabilities Act (ADA), and Health Insurance Portability and Accountability Act; and
    - (ii) prohibiting discrimination in employment, such as under the ADA, Title VII and the Age Discrimination in Employment Act, including with respect to pre- and post-offer of employment disability related questioning.
  - c. In addition to a review, each candidate for a DOE access authorization must be tested to demonstrate the absence of any illegal drug (SRNS to provide this testing), as defined in 10 CFR Part 707.4. All positions requiring access authorizations are determined to be *testing designated positions* in accordance with 10 CFR Part 707. All employees possessing access authorizations are subject to applicant, random or for cause testing for use of illegal drugs. DOE will not process candidates for a DOE access authorization unless their tests confirm the absence from their system of any illegal drug.
  - d. When an uncleared applicant or uncleared employee receives an offer of employment for a position that requires a DOE access authorization, the Subcontractor/Supplier shall not place that individual in such a position prior to the individual's receipt of a DOE access authorization, unless an approval has been obtained from the head of the cognizant local security office. If the individual is hired and placed in the position prior to receiving an access authorization, the uncleared employee may not be afforded access to classified

information or matter or special nuclear material (in categories requiring access authorization) until an access authorization has been granted.

- e. The Subcontractor/Supplier must furnish to the head of the cognizant local DOE Security Office, in writing, electronically, the following information concerning each uncleared applicant or uncleared employee who is selected for a position requiring an access authorization:

- (i) The date(s) each Review was conducted;
- (ii) Each entity that provided information concerning the individual;
- (iii) A certification that the review was conducted in accordance with all applicable laws, regulations, and Executive Orders, including those governing the processing and privacy of an individual's information collected during the review;
- (iv) A certification that all information collected during the review was reviewed and evaluated in accordance with the Subcontractor's/Supplier's personnel policies; and the results of the test for illegal drugs (SRNS to provide this testing).
- (v) The results of the test for illegal drugs (SRNS to provide this testing)

1. **Criminal Liability.**

It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to protect any classified information, special nuclear material, or other Government property that may come to the Subcontractor/Supplier or any person under the Subcontractor's/Supplier's control in connection with work under this Subcontract, may subject the Subcontractor/Supplier, its agents, employees, or Subcontractors/Suppliers to criminal liability under the laws of the United States (see the Atomic Energy Act of 1954, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794).

**J. Foreign Ownership, Control, or Influence**

The Subcontractor/Supplier shall immediately provide the cognizant security office written electronic notice of any change in the extent

and nature of foreign ownership, control or influence over the Subcontractor/Supplier which would affect any answer to the questions presented in the Standard Form (SF) 328, *Certificate Pertaining to Foreign Interests*, executed prior to award of this Subcontract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice, shall also be furnished concurrently to the Contracting Officer

- K.** If a Subcontractor/Supplier has changes involving foreign ownership, control, or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Subcontractor/Supplier to avoid or mitigate foreign influences.

- L.** If the cognizant security office at any time determines that the Subcontractor/Supplier is, or is potentially, subject to foreign ownership, control, or influence, the Subcontractor/Supplier shall comply with such instructions as the DOE Contracting Officer shall provide in writing, electronically, to protect any classified information or special nuclear material.

- M.** The DOE Contracting Officer may terminate this Subcontract for default either if the Subcontractor/Supplier fails to meet obligations imposed by this clause or if the Subcontractor/Supplier creates a foreign ownership, control, or influence situation in order to avoid performance or a termination for default. The DOE Contracting Officer may terminate this Subcontract for convenience if the Subcontractor/Supplier becomes subject to foreign ownership, control, or influence and for reasons other than avoidance of performance of the Subcontract, cannot, or chooses not to, avoid or mitigate the foreign ownership, control, or influence problem.

**N. Employment announcements**

When placing announcements seeking applicants for positions requiring access authorizations, the Subcontractor/Supplier shall include in the written electronic vacancy announcement, a notification to prospective applicants that reviews, and tests for the absence of any illegal drug as defined in 10 CFR 707.4, will be conducted by the employer and a background investigation by

the Federal government may be required to obtain an access authorization prior to employment, and that subsequent reinvestigations may be required. If the position is covered by the Counterintelligence Evaluation Program regulations at 10 CFR 709, the announcement should also alert applicants that successful completion of a counterintelligence evaluation may include a counterintelligence-scope polygraph examination.

**O.** Flow down to any Subcontractor/Supplier at any tier. The Subcontractor/Supplier agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all Subcontracts under its Subcontract that will require any Subcontractor/Supplier (at any tier) employees to possess access authorizations. Additionally, the Subcontractor/Supplier at any tier must require such Subcontractors/Suppliers to have an existing DOD or DOE facility clearance or submit a completed SF 328, *Certificate Pertaining to Foreign Interests*, as required in DEAR 952.204-73 and obtain a foreign ownership, control and influence determination and facility clearance prior to award of a subcontract. Information to be provided by a Subcontractor/Supplier (at any tier), pursuant to this clause may be submitted directly to the DOE Contracting Officer.

**P. (End of Clause)**

**Q.** [49 FR 12042, Mar. 28, 1984; 49 FR 38951, Oct. 2, 1984, as amended at 52 FR 38425, Oct. 16, 1987; 62 FR 2310, Jan. 16, 1997; 62 FR 42072, Aug. 5, 1997; 67 FR 14873, Mar. 28, 2002, 74 FR23120, May 18, 2009].

## **SECTION H**

### **H.1 AMERICAN RECOVERY and REINVESTMENT ACT of 2009, Pub. L. 111-5, (Recovery Act or Act)**

*The following terms are applicable if performance of this Order will require the Subcontractor/Supplier employee(s) to perform work under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act.)*

#### **A. Segregation and Payment of Costs**

Subcontractor/Supplier must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue

streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance. Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

#### **B. Prohibition on Use of Funds**

None of the funds provided under this Subcontract derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

#### **C. Wage Rates**

All laborers and mechanics employed by Subcontractors/Suppliers and subtier Subcontractors/Suppliers on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See <http://www.dol.gov/esa/whd/contracts/dbra.htm>.

#### **D. Publication**

Information about this agreement will be published on the Internet and linked to the website <http://www.recovery.gov>, maintained by the Accountability and Transparency Board (the Board). The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

#### **E. Registration requirements**

Subcontractors/Suppliers must have a DUNS number and be registered in the Central Contractor Registration (CCR). The information required for CCR Registration is to be provided on the SIF (Subcontractor/Supplier Information Form).

**F. Utilization of Small Business**

Subcontractor/Supplier shall to the maximum extent practicable give a preference to small business in the award of Lower-tier Subcontracts for projects funded by Recovery Act dollars.

**G. American Recovery and Reinvestment Act-Reporting Requirements**

A. The following Federal Acquisition Regulation (FAR) clauses are incorporated into the contract by reference:

FAR 52.225-21 Required Use of American

Iron, Steel, and Manufactured Goods-  
Buy American Act— Construction  
Materials  
(Mar 2009)

FAR 52.225-22 Notice of Required use of  
American Iron, Steel, and Other  
Manufactured Goods—Buy American  
Act—Construction Materials (Mar  
2009)

FAR 52.225-23 Required Use of American  
Iron, Steel, and Other Manufactured  
Goods-Buy  
American Act— Construction  
Materials under Trade Agreement  
(Mar 2009)

FAR 52.225-24 Notice of Required  
use of  
American Iron, Steel, and Other  
Manufactured Goods—Buy American  
Act—Construction  
Materials under Trade Agreement  
(Mar 2009)

FAR 52.203-15 Whistleblower Protections  
Under the American Recovery and  
Reinvestment Act of 2009 (Mar  
2009)

FAR 52.204-11 American Recovery and  
Reinvestment Act— Reporting  
Requirements  
(Mar 2009)

FAR 52.212-5 (Alternate II) Contract Terms and  
Conditions Required to Implement  
Statutes or Executive Orders—  
Commercial Items (Mar 2009)

FAR 52.214-26 (Alternate I) Audit and Records—  
Sealed Bidding (Mar 2009)

FAR 52.215-2 (Alternate I) Audit and Records—  
Negotiation (Mar 2009)

B. All other terms and conditions remain unchanged.